

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TYLER DIVISION

3 SOVERAIN SOFTWARE)
4 -vs-) DOCKET NO. 6:07cv511
5 NEWEGG, INC.) Tyler, Texas
6) 9:05 a.m.
7) April 28, 2010

7 TRANSCRIPT OF TRIAL
8 MORNING SESSION
9 BEFORE THE HONORABLE LEONARD DAVIS,
10 UNITED STATES DISTRICT JUDGE, AND A JURY

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23 Proceedings taken by Machine Stenotype; transcript was
24 produced by a Computer.

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 All right. First of all, I apologize for
6 not telling y'all yesterday, but I did look at your
7 various objections to the -- both sides' objections to
8 the video depositions, and all of the objections are
9 overruled, so you can make your --

10 MR. SAYLES: Very well.

11 THE COURT: And also, Mr. Sayles, I --
12 you indicated yesterday that you were very tired and
13 could not think of your objections, and I -- I want to
14 be sensitive to that, because I know this is a
15 time-crunching trial.

16 And I didn't mean to cut you off, and if
17 you would like to make those objections anytime later
18 this morning or have someone else make it, I will
19 re-entertain them.

20 MR. SAYLES: Thank you, sir.

21 THE COURT: Okay. All right. Now, I
22 believe there -- sorry, Mr. Adamo. You look
23 disappointed.

24 MR. ADAMO: Well, I thought I had looked
25 the gift horse in the mouth last night, and it had

1 smiled at me; and now, I guess, Your Honor, I've got to
2 earn it.

3 THE COURT: That's right. That's right.

4 All right. Now, y'all have some other
5 matters to take up with me before we bring the jury in?

6 MR. SAYLES: We're -- we're actually
7 ready to start with the jury. There are some other
8 matters, but I think they'll fall nicely at the break or
9 at noon --

10 THE COURT: Okay.

11 MR. SAYLES: -- and we can keep the jury
12 going, if the Court wishes.

13 THE COURT: All right.

14 MR. ADAMO: Two evidentiary issues that
15 we informed your Clerk about.

16 We need to reoffer our hearsay objections
17 to the three CompuServe manuals for preservation
18 purposes.

19 THE COURT: Okay. Would you like to do
20 that --

21 MR. ADAMO: And then there's the Trewitt
22 document that you saw, that I showed you yesterday when
23 Mr. Treese was on the stand. We need to have an
24 argument with you about that. The document is not
25 admitted into evidence, and we need a ruling beforehand.

1 The only other thing I have, Your Honor, is
2 our list of -- agreed list of exhibits that were
3 admitted yesterday.

4 THE COURT: All right. Bring the jury
5 in.

6 (Jury in.)

7 THE COURT: Please be seated.

8 All right. Good morning, Ladies and
9 Gentlemen of the Jury. Welcome back. I hope you had a
10 good night's rest, have all the cobwebs cleared this
11 morning, had your coffee, and are ready to hear some
12 more testimony.

13 So, Mr. Sayles, you may call your first
14 witness.

15 MR. SAYLES: May it please the Court.

16 As Newegg's expert, we call Mr. Lee
17 Cheng.

18 THE WITNESS: Good morning.

19 MR. SAYLES: You've been sworn.

20 THE WITNESS: Yes, I have.

21 MR. SAYLES: All right.

22 LEE CHENG, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

23 DIRECT EXAMINATION

24 BY MS. SAYLES:

25 Q We'll start out by introducing you to the

1 jury, please. Give them your name and your personal
2 background.

3 A My name is Lee Cheng. I'm the general counsel
4 and corporate secretary of Newegg, Inc., and I was born
5 in San Francisco. My father was a librarian.

6 And I grew up in a small town outside of San
7 Francisco. I went to the public schools in the area,
8 and I was fortunate enough, after high school, to be
9 able to attend Harvard College thanks to some
10 scholarships that I obtained.

11 After college, I worked my way largely through
12 law school at the University of California at Berkeley.

13 And when I graduated from law school in 1997,
14 I started in private practice. I did take out some
15 loans, so I had to pay it back.

16 So I started off in private practice in
17 Washington, D.C., and in Silicon Valley representing
18 mostly high-technology startup companies.

19 In the year 2000, I caught the startup fever
20 myself, and I joined --

21 THE WITNESS: Can you hear?

22 A In the year 2000, I caught the startup fever
23 myself, and I joined a telecom startup company. I was
24 employed, number one, there.

25 And for about two years, I was a general

1 counsel and also the head of administration at a
2 startup -- two different startup companies.

3 At my first startup company, we actually filed
4 for 70 patents in our first year, and so I'm very, very
5 familiar with why companies file for and acquire
6 patents.

7 In 2002, when the internet -- basically, the
8 bubble burst for the first time, I joined a -- I went
9 back into private practice, and I joined the law firm of
10 Latham & Watkins. It's the tall building law firm that
11 Ms. Wolanyk also worked at. And I worked there for
12 three years until I got married.

13 My wife and I had our first child, and I
14 decided to leave the tall-building law firms, because I
15 wanted to see my baby grow up.

16 I joined Newegg, Inc., in 2005 as its general
17 counsel.

18 Q All right. Let me stop you right there.

19 That -- is that an overview of your personal
20 and educational background and an overview of your
21 professional background?

22 A Yes, it is.

23 Q While you were at Latham & Watkins, did you
24 happen to know or meet Ms. Wolanyk?

25 A I never had the pleasure of meeting

1 Ms. Wolanyk until Soverain sued us.

2 Q So it was just a coincidence that the two of
3 you actually had a tenure with the same law firm?

4 A I don't think we overlapped. She -- I think
5 she left Latham, and she was in the Chicago office.

6 These are very big law firms. The law firm
7 now has about 2,000 lawyers. So it's very hard to meet
8 any other given lawyer.

9 Q All right. And if you would, tell us the type
10 of law practice that you had when you were in the
11 practice of law.

12 A I was also a corporate lawyer; and as a
13 corporate lawyer, I focused on representing startup
14 companies. So I did all of their corporate work. I
15 formed them. I provided advice on corporate governance.
16 I helped them raise money.

17 But when you represent startups, they, you
18 know, usually require and they lean on their lawyers to
19 provide them with all sorts of different types of legal
20 advice.

21 So I also did some other types of contract
22 work for them, including some -- a little bit of
23 licensing, some real estate work, and just the full
24 gamut of services to small startup companies.

25 Q All right. Now, you've been in the courtroom

1 for the last two days. We're now on the third. Have
2 you ever -- in the past ever testified in a jury trial
3 in a courtroom before?

4 A I haven't. This is my first time.

5 Q Now, in your practice, did it involve you
6 being the litigation lawyer that does the courtroom
7 work?

8 A I'm not a litigator.

9 Q All right. Would you describe to the Ladies
10 and Gentlemen of the Jury what your duties and
11 responsibilities are as general counsel at Newegg?

12 A I am the chief legal officer. I don't have
13 the title. I'm the general counsel effectively. I
14 oversee the whole legal function of Newegg.

15 So whatever work that I and my team are
16 capable of doing ourselves in the way of legal work and
17 legal needs, we do ourselves. It saves a lot of money.

18 From time to time, when the need arises for
19 specialty work, like litigation, for instance, we retain
20 and we manage and oversee outside counsel.

21 I also oversee the risk management function at
22 Newegg, which involves the purchase of insurance.

23 And I'm also the corporate secretary of
24 Newegg, which means that I interact with our Board of
25 Directors. I organize board meetings, and I make sure

1 that the company is up to date on its corporate
2 governance practices.

3 Q When did you become the general counsel of
4 Newegg?

5 A At the end of September in 2005.

6 Q And as the corporate representative here in
7 court and as the general counsel of Newegg, are you
8 familiar with its history from formation?

9 A I'm very familiar with Newegg's history since
10 its formation. Part of my job is to keep the records of
11 Newegg.

12 When I first joined, I was basically the
13 second general counsel. The first general counsel was
14 there very briefly. And so I had the task of,
15 basically, tracking down, organizing, understanding all
16 of our corporate records, Newegg's corporate records,
17 since its formation.

18 Q Can you tell us when Newegg was founded or
19 when it launched?

20 A I think Newegg Computers was technically
21 founded in 2000 as a company. I think there's been talk
22 in the last couple of days of a company called Magnell
23 or ABS. Magnell and ABS are actually the same company.
24 And Newegg Computers, when it was formed, was a separate
25 company from Magnell and ABS. It was literally a

1 startup company.

2 And Magnell and ABS was indeed a
3 computer-maker. It was -- the industry calls it a
4 systems integrator. They build computers to order.
5 And as some people are probably familiar with, that was
6 a very, very competitive market in the mid to late '90s,
7 early 2000. With the advent of companies like Dell,
8 like HP, like Compaq, basically, Magnell was being
9 slowly squeezed out of business.

10 And Newegg was virtually a -- our founder,
11 Fred Chang, viewed Newegg as virtually a Hail Mary.
12 There was a young executive at the time named Howard
13 Tong, who said: You know, Hey, Fred, there's this thing
14 called the internet. Some of our customers say they'd
15 rather buy some computer components from us instead of
16 buying built-to-order systems. Can we try this out?
17 And Fred said: Yeah, try it out. If you don't make it,
18 I'm packing up and going home.

19 Q All right. So that's a little background on
20 the origin of Newegg as an online retailer of
21 electronics?

22 A That's correct.

23 Q All right. Now, the jury has heard some other
24 witnesses say -- and they've heard the opening
25 statements, but the opening statements aren't evidence.

1 I need to get you to tell the Ladies and Gentlemen of
2 the Jury whether Newegg has been successful from the
3 time of its inception to date.

4 A We are very proud to say and we're very lucky
5 to be able to say that we've been very successful as a
6 company. We have grown very quickly since the launch of
7 the website in early 2001.

8 In recent years, our growth has slowed
9 tremendously. Part of it is just the law of large
10 numbers. Part of it is because the competition has
11 gotten very, very fierce in internet and online retail.

12 Q All right. Now, keep your voice up just a
13 little bit. You're doing better now, but -- you had it
14 there for a moment.

15 When did Newegg first learn of Soverain?

16 A We first learned of Soverain in November of
17 2007 when we were served with a lawsuit.

18 Q And had you ever heard of Soverain yourself
19 before?

20 A I had never heard of Soverain before November
21 of 2007.

22 Q And did you have any familiarity or knowledge
23 of the patents-in-suit before the lawsuit was filed?

24 A I did not.

25 Q What about Soverain's predecessor Divine and

1 Open Market? Had you ever heard of them?

2 A I did hear of both Open Market and Divine when
3 I was a lawyer in Silicon Valley. There was a huge,
4 huge tech bubble, and both Divine and Open Market were
5 well-known in the industry as high-flyers. They went
6 public. They achieved fantastic valuations.

7 Divine was probably more -- I knew of it as a
8 venture capital fund. And they were just high-flyers, a
9 lot of companies that at that time were being valued at
10 and raising billions of dollars sometimes based more on
11 business plans and hope.

12 Q Did you ever have any professional involvement
13 or interaction with either Divine or Open Market?

14 A I didn't, no.

15 Q It was just knowledge from being in that field
16 at that time?

17 A Right. Right. That's correct.

18 Q All right. Now I want to shift your attention
19 to the subject of licensing.

20 As the chief legal officer of Newegg, do you
21 have responsibility for licensing of software?

22 A I have overall responsibility for all legal
23 needs of Newegg, so I do have a lawyer who focuses more
24 on licensing of the day-to-day sort of operation and
25 work of negotiating the licenses, but I have overall

1 responsibility for licensing.

2 Q And I mentioned software licenses, and I think
3 the Ladies and Gentlemen of the Jury might have heard
4 this, but just explain briefly the difference between
5 software license on the one hand and a patent license on
6 the other hand.

7 A A software license typically, as we enter
8 into -- my understanding, as we enter into software
9 licenses, they're basically for a very -- a fairly
10 comprehensive set of solutions to address specific
11 business needs.

12 Patent licenses are for licenses to practice a
13 technology.

14 Our company doesn't generally -- I mean, we --
15 to my knowledge, we only have licensed a single patent
16 license, because our company is not a technology
17 company, per se. We may be a dot-com, but what we
18 really are is a retailer. And --

19 Q All right. Let me ask you this question:
20 Does Newegg have any official policy with respect to
21 licensing patents?

22 A We don't have a policy to license or not
23 license patents. We license intellectual property.
24 Software and patents are just two different types of
25 intellectual property.

1 Software can often -- a software license can
2 often include a patent or patent rights of the licensor,
3 but we don't have any policy against or for licensing
4 any type of IP. We license it when we need to, when
5 it's appropriate, at commercially reasonable rates.

6 Q Does Newegg license any software that you've
7 mentioned?

8 A We license a lot of software.

9 Q And in licensing software, do you pay the
10 freight, so to speak? Do you pay the license fees for
11 software?

12 A Yes. We pay a license fee for the software.
13 It's a lump-sum, one-time payment upfront for the right
14 to use the software.

15 Q As the chief legal officer, can you tell us at
16 least some of the software licenses for which Newegg
17 actually pays a lump-sum fee?

18 A Sure.

19 We license software to perform a lot of
20 different functionalities that go towards operating our
21 website or even to allow it to exist in the first place.

22 And so we license from big companies,
23 well-known companies, like Microsoft. We license from
24 IBM. We license from -- accounting functionalities from
25 a company called SAP, which is a competitor of Oracle.

1 We license from less-known companies, less
2 well-known companies, Okami or Coremetrics or, for
3 example, our search functionality.

4 If you were to go to our website and try to
5 find one of our 40,000 products, you know, you would
6 type some keyword into a search box, but the fundamental
7 functionality and the platform comes from a company
8 called Endeca.

9 Q All right. Keep your voice up just a
10 little --

11 A Sorry.

12 Q -- all right?

13 Now, we've talked about software licenses a
14 little bit. Now, let me ask you, why is it that Newegg
15 generally does not license patents? I think you
16 mentioned that a moment ago.

17 A Well, we generally don't license patents
18 because we are not a technology company. We do not --
19 we -- what we do is, we buy products -- literally, we
20 buy products from hundreds, if not thousands -- low
21 thousands of vendors; companies like Sony, Sharp, you
22 know, Toshiba, companies like HP.

23 And we sell them. We merchandise. We sell
24 them to end users. We're like a Best Buy online, except
25 we don't have physical stores. And --

1 Q All right. Let's just be clear about this.

2 In the context of this lawsuit, you have
3 become familiar with Soverain and its business, right?

4 A Right. Correct.

5 Q Are Soverain and Newegg competitors in the
6 marketplace?

7 A We're not competitors in the marketplace.

8 Q Explain that, please.

9 A Soverain doesn't sell any products, certainly
10 not on a resale basis. They sell -- or they purport to
11 sell a software suite. They purport to license a family
12 or groups of patents. We don't do that.

13 We sell -- our business involves buying
14 someone else's product, merchandising it, and then
15 reselling it, providing services to customers if they
16 have problems. We're the middleman, trusted middleman,
17 between customers and all the vendors.

18 Q Mr. Cheng, you heard me, at least in opening
19 statement, describe the early beginnings of Newegg and
20 its lack of resources.

21 Can you describe what Newegg is like today in
22 terms of its approach to managing its resources?

23 A Well, despite what appears to be our business
24 success, one of the reasons that I think Newegg has
25 always been successful is because of our frugality.

1 We've always -- we worked frugal before it was popular
2 to be frugal.

3 I said, you know, one of the reasons that I
4 think Newegg has been successful is that, you know, we
5 have always been very, very frugal. We were frugal
6 before it was popular to be frugal, and we've always --
7 our company is what's known as a C-corporation.

8 And so we don't pay dividends. All the money
9 that the company earns always gets plowed back into the
10 business. And we watch every single penny very
11 carefully. And we do that so we can offer our
12 customers, you know, low prices and high-quality
13 customer service.

14 So at the corporate level, we really try to
15 squeeze every single penny. Every single penny has to
16 be justified. Our -- you know, I think you'll see a
17 picture later of our corporate headquarters. It's a
18 warehouse. We converted a warehouse.

19 I work in a cubicle. Our CEO works in a
20 cubicle. All of our executives fly coach everywhere we
21 go.

22 Two nights ago, our CTO, James Wu, who you'll
23 meet later today, and I were up till 1:30 in the morning
24 putting together exhibit binders physically, and that
25 saved us a lot of money, so...

1 Q All right. Let's do introduce the Ladies and
2 Gentlemen of the Jury to what Newegg looks like. I'm
3 going to show you what's in evidence as Exhibit 112.
4 This is a series of pictures.

5 This is No. 34. Tell us what we're looking at
6 here.

7 A This is the sign at the front of our worldwide
8 global headquarters.

9 Q And this is the outside?

10 A This is the outside.

11 Q All right. Let's look at 35.

12 A And here is my home away from home. It's a
13 converted warehouse. True to Newegg tradition, we
14 converted it ourselves. Our own people did most of the
15 work inside the warehouse.

16 Q For a converted warehouse, it looks pretty
17 nice.

18 A We try to do good work.

19 Q All right. Now, I want to show you
20 Exhibit 112, No. 41, and then we'll go to 44. And I'd
21 like you to describe what the jury is seeing here,
22 please.

23 A These are the cubicles in our warehouse
24 where -- this is actually our finance and accounting
25 team. Way in the corner over there, you know, there's

1 the head or -- our chief financial officer, basically,
2 has his royal cubicle.

3 Q And then, if you would, tell us what 44 is.

4 A And 44 is some more, you know, accounting and
5 finance cubicles. And in the background, you can see my
6 legal department. I'm right behind the door.

7 Q All right. And let's take a look at 112, No.
8 3. Tell the Ladies and Gentlemen of the Jury what this
9 is.

10 A This is one of our warehouses. We have a
11 network of warehouses spread across the country. This
12 is one of the ones in California. This is what we call
13 Warehouse 7, and this is where a lot of small parcels
14 get shipped out; anything that can be put into a
15 slightly larger box.

16 Q All right. From Exhibit 112, I'm now going to
17 show you picture 11 first. Tell us what we're looking
18 at here.

19 A This is the -- this is also -- so a group that
20 we call our Product Management Group is also resident in
21 Warehouse 7. So this shows our Product Management
22 Group. These are the people who buy and sell the
23 products that we offer for sale to end users and
24 customers.

25 Q And what's No. 12?

1 A It's a picture of the same group.

2 Q All right. Now, there's been some discussion
3 of Newegg's warehouses where they actually do shipping.

4 Tell the Ladies and Gentlemen of the Jury
5 where the shipping warehouses are located.

6 A We have two shipping warehouses located in
7 California. So our company was founded in California,
8 so it's -- we have one warehouse in California for
9 larger bulker -- bulkier items, and then we have another
10 warehouse, which is Warehouse 7, for the smaller items.

11 We have two warehouses -- well, one warehouse
12 each in Memphis, Tennessee, and one in New Jersey, and
13 we put them there for a specific reason.

14 It allows us to offer our customers a
15 guarantee, three-day -- three-business-day delivery from
16 the time your order is approved to your doorstep. And
17 it allows us to use ground shipping rates to get it
18 there that quickly.

19 We usually get products to our customers in
20 about two days. That's one of the reasons customers
21 like us. We -- we over-deliver.

22 Q Do you usually do it in two, but you guarantee
23 three?

24 A We typically guarantee three. There is a
25 discount -- there's also now a discounted shipping

1 option where if you rely on the United States Postal
2 Service, it's a five-day guarantee.

3 Q All right. Now, I'd like to go through one of
4 the warehouses. Is the operation of the three
5 warehouses substantially similar so that if we look at
6 one, we'll have the idea?

7 A Yes. Yes. They're very, very similar.

8 Q All right. Let's take a look at Defendant's
9 Exhibit 112, No. 46. Just tell us what we're looking at
10 here, please.

11 A This is the initial receiving area in
12 Warehouse 7. And this is where, when we order a product
13 from a vendor, the vendor will ship it over to us, we
14 accept the shipment, and you can see on the left-hand
15 side, you know, basically, shrink-wrapped, you know,
16 items from a particular vendor.

17 And you can see in the background the racks
18 that we have -- we built to store this inventory. It
19 looks a little bit like a Cosco, but slightly messier.

20 Q All right. Now, I want to move through the
21 process in the warehouse.

22 Let's take a look at No. 7. Tell the Ladies
23 and Gentlemen of the Jury what's going on in Photograph
24 112-7.

25 A So the gentleman on this forklift that you see

1 is actually taking the inventory and putting it on the
2 racks.

3 Q All right. Let's look at No. 48. What's
4 happening here?

5 A So in 48, between the racks and -- you know,
6 between the racks we have an automated -- semi-automated
7 conveyor belt. And on the racks, you see our shopping
8 bins.

9 There are bins -- when a customer places an
10 order, that customer's order then is, you know,
11 basically, assigned a -- the customer is assigned a bin,
12 and the bin moves through the conveyor belt.

13 And it just moves past all of our inventory,
14 small-item inventory, and the worker -- we have workers
15 stationed throughout the warehouse who will place items
16 in a bin.

17 Q And are they signaled as to what item to put
18 in? And I'm showing you Photograph 49.

19 A Yes. Yes, they are. I mean, they -- they are
20 signaled using what's called a pick-to-light system.
21 So if -- you know, we have a warehouse management
22 software system that basically tracks where the -- you
23 know, what -- what items a customer ordered. It's very
24 sophisticated. This was a very expensive system that we
25 had to install and implement in all of our warehouses.

1 And so when a light goes on as a bin passes a
2 certain section of the warehouse, that means that the
3 worker is supposed to pick that item up and put it into
4 that shopping cart, into that bin.

5 Q All right. I'm going to ask you, if you
6 would, as we go through the photographs, through the
7 process, to describe, as we see them, 50, 52, 53, 54,
8 and 55. And if we can, I think that will speed it up,
9 but I just want you to explain the process as we see it
10 in these exhibits.

11 A Sure. So, again, you know, 50 is a bin. It
12 shows the bar code. That bin has now been assigned to
13 one customer.

14 52 shows the bin, presumably, after items have
15 been placed into the bin that the customer ordered,
16 moving through our conveyor belts. It's a multi-story
17 racking system, and it's -- 53 is also very similar.
18 You see already some items in various bins.

19 54, very similar. It's getting closer and
20 closer to the end of the, you know, picking area.

21 Q All right.

22 A And then --

23 Q Let's --

24 A Yeah.

25 Q Let's continue on with the process in the

1 warehouse through the rest of the photographs.

2 A So 55 shows the contents of a bin. This is
3 what one customer ordered. And there's a UPS shipping
4 label that's been dropped into the bin to prepare the
5 order for packaging. And you can see this customer
6 order, you know, a hard disk drive, I think, and some
7 memory and things like that.

8 Q All right. 57 and 58?

9 A So 57 shows where we have staff that's waiting
10 with boxes to package all of the orders, put them into
11 the bin.

12 Newegg didn't always have such a sophisticated
13 system. When Newegg started, it was all manual.

14 Literally, people were in a -- one very small,
15 little warehouse.

16 And I heard stories from the founders about
17 how they would sit around with stopwatches to time
18 themselves to figure out how to, you know, configure the
19 few conveyor belts that they had to optimize the filling
20 time.

21 Q All right. Let's continue on until we get
22 through the boxing and the -- out the other door.

23 A So --

24 Q Tell us what's going on here.

25 A This is where an order is getting checked.

1 It's very important, when somebody places an order, to
2 make sure that the order is accurate, because,
3 otherwise, you end up with either a return or a very
4 irate customer, right?

5 And so we make sure we verify that an order is
6 accurate. This lady is verifying that the order is
7 accurate and printing out a shipping label.

8 Q All right. And next?

9 A And this gentleman is --

10 Q I think you're off a little bit. Look at your
11 screen.

12 A Oops, sorry.

13 Q 63.

14 A Okay. So -- you know, and those people are
15 basically just handling the packages and preparing them
16 to get to -- on 64 here, which is what's being -- oh,
17 I'm sorry. Now, we're back to this nice young lady.

18 Okay. So she is, basically, about -- she's
19 helping to prepare this package, this box, now that has
20 been checked, that's been verified for shipment.

21 Q All right.

22 A So -- yeah.

23 Q And what's going on here?

24 A So at the end of our warehouse process, Newegg
25 doesn't actually end up delivering the packages

1 themselves. Like almost everybody else, we rely on and
2 use UPS and FedEx and the U.S. Postal Service. But we
3 now ship so many boxes a day now, that we have a very
4 close partnership with UPS.

5 And here what we have done is, you know, we've
6 basically assembled all of the boxes going probably to
7 one area, maybe based upon ZIP codes, and we're
8 shrink-wrapping it so that UPS can come and just grab
9 it, stick it in the right truck, so that they can just
10 speed it off there and get it to our customers in our
11 promised three days.

12 Q All right. And then 65, is this the back end
13 of an open truck?

14 A That's correct. At any given time, because we
15 ship a lot of products, we have UPS trucks parked
16 literally right -- right at our warehouse gate. We have
17 at any given time probably about a dozen UPS personnel
18 stationed inside our warehouses.

19 Q All right. Now, I want to shift your
20 attention from the warehouse now that we've seen how
21 it -- products come in, get stored, and get shipped out.

22 Generally speaking, tell the jury what the
23 company's 16 principles are in a general way.

24 A Our company was founded and it's still largely
25 controlled by a gentleman named Fred Chang. And he's

1 really probably the primary reason, I think, Newegg was
2 able to achieve success.

3 Like a lot of business visionaries, he didn't
4 set out -- and he's told me this many times -- he didn't
5 set out to start a company, to run a company to make as
6 much money as possible out of every customer, out of
7 every transaction. He's always believed that Newegg
8 should represent more than making money.

9 And he's told me many times: If you do the
10 right thing by your customers, if you're fair, the
11 financial part, the money will take care of itself.

12 And so he -- from the very beginning, he wrote
13 up a business philosophy. He wrote up 16 principles.
14 And he wanted all of our workers to follow these 16
15 principles, all of our managers, all of our workers.

16 And these are essentially guidelines on how
17 managers should treat people and employees, how our
18 employees should be viewing customers, and how we should
19 conduct ourselves and behave.

20 Q Do these banners that we see in 112-14
21 actually hang in the workplace at Newegg?

22 A They are in every one of our offices. At our
23 bigger locations, they're in multiple places. They're
24 printed on the back of all of our employee IDs.

25 Q All right. Now, this particular actual

1 photograph of the 16 principles is a little hard to read
2 here, and we've prepared a slide that simply puts those
3 principles on the slide.

4 Can you tell us -- and you need to do it
5 verbally, because we're making a record here -- what the
6 16 principles are that constitute the company
7 philosophy?

8 A Respect, tolerance, fairness, integrity,
9 honesty, objectivity, cooperation, and proactivity,
10 leading by example, strictly enforcing philosophy,
11 knowing when to delegate, trustworthiness, maintaining
12 the highest standards, intelligence, passion, knowledge,
13 and experience.

14 Q All right. You told us who created these
15 principles and why. And are these principles lived and
16 talked about on a daily basis in the workplace?

17 A They are very, very important to Fred.

18 Q All right.

19 A Now, of these principles, he -- I've worked
20 fairly closely with Fred, and of the principles, he --
21 what ties them all together, what he believes very
22 strongly in, is our integrity and our fairness.

23 You see integrity and honesty both up there,
24 and some people actually would say they're kind of
25 redundant, because honesty is really just a subset,

1 technically, of integrity, and that's the --

2 Q Now you're being a lawyer.

3 A That's the lawyer in me thinking, that's
4 right. And I pointed that out to Fred, and Fred said:
5 Well, it's important enough to me I want to say it
6 twice.

7 Q All right. Now, let me shift your attention
8 to customer service.

9 What is Newegg's reputation regarding customer
10 service?

11 A Newegg's business from day one, it was built
12 on a recognition that our success in business ends and
13 begins -- begins and ends with whether or not we're able
14 to make our customers happy, to know what they want, to
15 give them what they want, to give them selection of
16 product and low pricing.

17 And if something goes wrong, we're, you know,
18 to be fanatical, completely fanatical about making sure
19 that our customers are well taken care of.

20 I mean, we -- for many years, we had a return
21 policy, for instance, where a year after you bought an
22 item, you could call up our customer service call center
23 and say: Hey, I have a problem. You know, yes, I know
24 your return policy is technically 30 days.

25 And our CS guys would be delegated the

1 authority to say: You know what? We'll take care of
2 you. You know, you're our customer, and we want you to
3 be happy.

4 And that's been Newegg's philosophy since day
5 one.

6 Q I'm showing in a slide graphic here some
7 representative awards for customer service. Are these
8 all the awards that Newegg has received?

9 A No. These are not all the awards we've
10 received for customer service. I suspect there are
11 probably some other ones. These are some of the ones
12 we're very proud of. A lot of these -- these are
13 awarded by third parties.

14 Computer Shopper, for instance, is a leading
15 magazine for a core customer base of people who like to
16 play computer games and build their own computers.

17 We're proud to say that we won their Shoppers
18 Choice awards for now the last five years. We also won
19 in 2009.

20 You know, we were ranked the top computer and
21 electronics retailer, not in size, but because of our
22 customer service, in 2008, in a national survey of
23 internet retailers.

24 We were voted the -- well, I think -- do you
25 want me to read it? Sorry. Do you want me to read all

1 of them or --

2 Q No. Are these just representative of the many
3 customer service awards that Newegg has received?

4 A Yes. They're representative of awards and
5 recognition that we take a lot of pride in.

6 We don't do a lot of mass market advertising.
7 This is really -- it's doubtful that many people have
8 heard of Newegg, I think, before -- many of you had
9 heard of Newegg before this lawsuit.

10 And what we do instead is we let our customers
11 do the advertising for us. It's word of mouth that
12 makes our business. About 70 percent of our revenue is
13 generated from people coming back because they had a
14 good shopping experience.

15 Q Based on your knowledge, experience, and your
16 time with Newegg, what distinguishes Newegg from its
17 competition in the online sale of retail products?

18 A It's our customer service. I think it's the
19 fact that we try to delight our customers. We try to
20 over-deliver to our customers. When we promise three
21 days, we try to get it to them in two. We take care of
22 them.

23 Our customer services -- we make sacrifices to
24 take care of our customers. Our customer service call
25 center has always been in the United States.

1 We've never considered sending our call center
2 offshore or to outsource it, because we want it to
3 control the customer experience. We want it to be able
4 to be there -- executives to be there in person to say:

5 Hey, you know, take care of that customer on
6 that first call and that first contact.

7 And of course, as Dr. Grimes mentioned on
8 Monday, our low prices.

9 THE WITNESS: And by the way, thank you,
10 Dr. Grimes, for your business.

11 Q With regard to the awards that have been
12 received and the success that's been achieved, has any
13 particular specific function of the website ever been
14 pointed out as the basis for that?

15 A The awards that we've received for customer
16 service, nobody has told us that any functionality --
17 and you can think of these functionalities really, I
18 think, appropriately as tools, right?

19 They're sort of -- they're just like if you
20 were in a supermarket. There's a shopping cart. It's a
21 tool. It's one asset out of hundreds, if not thousands,
22 of different assets, tools, fixtures, that contribute to
23 allowing a store to exist.

24 Nobody has mentioned a -- to my knowledge, in
25 these awards, a specific tool that caused them to vote

1 Newegg as providing great customer service.

2 Q All right. Now, in the three warehouses and
3 at the corporate headquarters that you've told us about
4 today, how many persons are employed with Newegg?

5 A I'm sorry. Just in the three warehouses and
6 the corporate headquarters?

7 Q Well, yes, in the United States.

8 A In the United States, we employ about a
9 thousand people.

10 Q And does that represent growth in the last few
11 years, in terms of the number of jobs and employees?

12 A No. Actually, we've managed to figure out
13 ways, you know, through innovation, to not increase our
14 headcount in the United States.

15 But given the fact that the economy was
16 contracting, we're extremely proud -- when my new CEO
17 came on board two years ago, he talked to all of our
18 employees. He made a commitment to all of our
19 employees, which we're very proud to have kept, that we
20 would not lay anybody off to meet our numbers.

21 Q All right. And you mentioned that the company
22 is a very frugal company. You've talked about that.

23 A Yes.

24 Q And the sales at low prices, you've talked
25 about that.

1 A Yes.

2 Q And you've talked about Fred Chang's
3 philosophy of making small margins but on large volumes.

4 A That's correct. That's correct.

5 Q And you heard some projections that were
6 relied on by Mr. Nawrocki yesterday that he pulled out
7 that showed 6 percent profits.

8 Do those represent the operating profit
9 margins of Newegg?

10 A Only in our wildest dreams. We've never come
11 close to 6. Our profit margins are currently -- our
12 actual profit margins are currently and historically --
13 they hover just a little bit over 1 percent.

14 Q And if Newegg had to pay 25 to 33 percent of
15 its operating profit to someone else, what would it do
16 to the company?

17 A We would go out of business very, very
18 quickly; and so, for that matter, would any company
19 that -- that, basically, agreed to pay that kind of
20 percentage of their profit for a single functionality.

21 MR. ADAMO: Your Honor, I move to strike
22 the last part of the answer. No foundation. What he
23 says about Newegg is one thing, but that's speculative
24 and opinion testimony regarding what other companies
25 might have happen to them if they paid that rate.

1 THE COURT: All right. Sustained at this
2 time.

3 Q (By Mr. Sayles) All right. Let me -- let me
4 ask the question again, and answer it specifically.

5 What would it do to Newegg, not others, if it
6 had to pay 25 to 33 percent of its profits to a single
7 other entity?

8 A If we had to pay 25 to 33 percent of our
9 profits to license a single or a few functionalities, we
10 would very likely be driven out of business in short
11 order, because we could not be competitive in a very
12 competitive marketplace.

13 MR. SAYLES: I'll pass the witness.

14 THE COURT: Cross-exam.

15 MR. ADAMO: Thank you, Your Honor.

16 THE WITNESS: Thank you.

17 MR. ADAMO: You're welcome.

18 May I proceed, Your Honor?

19 THE COURT: Yes, you may.

20 MR. ADAMO: Thank you.

21 CROSS-EXAMINATION

22 BY MR. ADAMO:

23 Q Good morning, Mr. Cheng.

24 A Good morning.

25 Q I'm over here.

1 You and I have not met each other before,
2 officially, have we?

3 A I shook your hand on Monday.

4 Q That's close enough. I will try to be as
5 brief as I can.

6 You mentioned, in response to one of
7 Mr. Sayles' questions, that Newegg only licensed one
8 patent.

9 Do you recall that testimony?

10 A To my recollection, we have only entered into
11 a single patent license.

12 Q That was -- that was a patent that Magnell
13 entered into, sir?

14 A I don't remember the contracting party.
15 What was the counterparty?

16 Q MPEG LA, LLC.

17 A That's -- that's the one that -- that's
18 correct. That's the single patent license that we've
19 entered into.

20 Q All right. That's a patent license, correct?

21 A It's a license for a whole pool of patents.
22 It's a whole bunch of patents.

23 Q So the answer is, yes, it's a patent license?

24 A Yes, it's a patent license.

25 Q And it's a running royalty license, correct?

1 A That's correct. That particular license has a
2 royalty that is based upon the number of units of a
3 specific product that we sell. They're MP3 players, and
4 it's for a very, very small amount; about \$2,000 every
5 half year.

6 Q It is, however, for a running royalty,
7 correct?

8 A This particular patent license -- patent
9 license is for a running royalty. It's not a product
10 that we sell. Yes.

11 Q And that's the only patent license you have,
12 and that patent license is a running royalty, correct,
13 Mr. Cheng?

14 A To the best of my knowledge, that's the only
15 patent license that we have. It covers a product that
16 we sell. We do not have any patent licenses for any of
17 the functionalities or tools.

18 Q Sir, I'm sorry. I guess I'm not making my
19 questions very clear.

20 The question was very simple. That patent
21 license has running royalty payments, correct?

22 A That's correct. That's correct.

23 Q Now, in response to another one of Mr. Sayles'
24 questions -- hopefully, I took this note accurately --
25 you told him that Newegg doesn't do a lot of mass market

1 advertising, that you operate on word of mouth.

2 Is that approximately what you recall saying
3 to him?

4 A That's correct. We do not do the kind of --
5 you know, historically, we really just haven't engaged
6 in the kind of branding that a lot of better-known
7 competitors have.

8 We historically don't do a lot of billboard
9 advertising or television ads. We don't have any
10 stadiums named after us. We don't put our logo on, you
11 know, NASCAR cars.

12 Q All right. The question was, did I recite
13 accurately what your testimony was?

14 A You did. You did.

15 Q Thank you.

16 You know what a sponsored link is, don't you?

17 A Yes, I know what a sponsored link is.

18 MR. ADAMO: Would you put up Plaintiff's
19 Exhibit 16 for me, please?

20 Q (By Mr. Adamo) I'm going to show you the first
21 page of Plaintiff's Exhibit 16.

22 You're familiar with Google, aren't you,
23 Mr. Cheng?

24 A Oh, yes, I'm familiar with Google.

25 Q And you recognize what I've put up here as

1 search results of a -- at least part of the search
2 results of a Google search?

3 A I do. It is -- it's -- it's -- you know,
4 it's, basically -- yeah, it's a search page from Google.

5 Q And the search was for computer components.
6 Do you see that up in the box at the top?

7 A Yes.

8 Q On the right-hand side, you see there's a list
9 of sponsored links.

10 Do you see those?

11 A Yes.

12 Q That means people pay money to Google to get
13 the information in those links on search results, such
14 as we're seeing in Exhibit P16, right?

15 A That's correct. On the right-hand side, it
16 does have search results.

17 Q You've answered the question, Mr. Cheng.
18 Thank you. I want to move along. I'm on a time budget
19 here, so try to stay with me.

20 The third item down in the sponsored links is
21 from Newegg, correct?

22 A That's correct.

23 Q It reads: Newegg. Huge savings on PCs,
24 digicams, TVs. Start saving today with newegg.com. And
25 then there's a www.newegg.com, correct?

1 A That's correct.

2 Q That www.newegg.com is a hypertext link,
3 correct?

4 A Yes, it is a hypertext link.

5 Q So someone picking up these search results
6 reads the sponsored link that you-all paid for so that
7 they would show up in these results, clicks on
8 www.newegg.com in that spot, and bang, they're at your
9 website, correct?

10 A That's correct.

11 Q And that's intentional.

12 A Oh, absolutely.

13 Q And that's why you're paying Google to do
14 this, correct?

15 A That's right.

16 Q Would you look, please, at the next --

17 MR. ADAMO: Looks like it's the third or
18 fourth page, Mr. Gooden, where we have the computer hard
19 drives?

20 Q (By Mr. Adamo) You with me, Mr. Cheng?

21 A Which page is it?

22 Q In your copy, it would be the -- it's
23 double-sided, so one, two, three, fourth page.

24 A Is it the one that says --

25 Q If you look at the monitor, it might help.

1 A Oh, yeah.

2 Q There you go.

3 All right. You with me?

4 A No. My monitor is still showing Google.

5 Q You got it now?

6 A No. It's still --

7 Q All right. Then look -- look at the soft copy
8 in front of you, if you don't mind. Four pages and
9 you'll see it.

10 A One, two, three -- my fourth page is blank.

11 Q Part of the problem is you're not looking at
12 the right exhibit, sir.

13 A Oh, I'm sorry. You're right. I'm sorry. I
14 thought you wanted me to move on to --

15 Q P16, which is the one we were on. Try to stay
16 with me.

17 A Okay. I got it.

18 Q Good.

19 Okay. All right. Fourth page, that's a
20 search on computer hard drives, correct?

21 A That's correct, yes.

22 Q All right. And there were sponsored links
23 there as well, correct?

24 A Yes. Yes.

25 Q And the second of the links, hard drive deals,

1 that's the sponsored link that Newegg paid for so that
2 it would show up on these Google searches, correct?

3 A That's correct, yes.

4 Q All right. And it says: Hard drive deals.
5 Huge selection of hard drives, internal, external, and
6 more. And then in green, www.newegg.com hypertext link,
7 (snaps fingers), click on that, bang, you're at your
8 website, correct?

9 A That's correct.

10 Q And that's what you paid Google to do to bring
11 customers to your website, right?

12 A Yes. That's one of the ways we advertise,
13 that's correct. That gets much better results than a
14 billboard.

15 Q If you look through the rest of the exhibit,
16 and I won't belabor the point, there is search results
17 for computer motherboards, and there's a
18 Newegg-sponsored link there, search results for computer
19 parts. There's a Newegg-sponsored link there as well.

20 Do you know that?

21 A I do know that, Mr. Adamo.

22 Q Now, would you look at Exhibit P17 for me,
23 please, sir.

24 A That's the Gizmodo?

25 Q No. That's -- that's --

1 A P17.

2 Q That is right. That is Gizmodo, correct.

3 A Right. Okay.

4 Q Let's just look at the first page of P17.

5 There are sponsored links on that first page,
6 correct?

7 A That's correct.

8 Q And right on the bottom of the first page is a
9 Newegg-sponsored link?

10 A Yes, there's a Newegg-sponsored link.

11 Q And Newegg paid Gizmodo to put that sponsored
12 link into this printout, correct?

13 A That's correct, yes.

14 Q And as we saw earlier: Huge savings on PCs,
15 digicams, TVs. Start saving today with newegg.com. And
16 then www.newegg.com hypertext link, click on that, bang
17 (snaps fingers), customer's at your website, correct?

18 A I hope so, yes.

19 Q And that's why you pay these two companies,
20 Google and Gizmodo, to put up sponsored links. It's to
21 bring customers to your website, correct?

22 A That's correct.

23 Q And that's, I think you just said,
24 advertising, correct?

25 A We absolutely advertise, Mr. Adamo.

1 Q Right. And this is absolutely mass market
2 advertising, isn't it? What could you think of that has
3 more people looking at it every day than Google? This
4 is mass marketing, isn't it, sir?

5 A No. I would -- I would disagree. I don't
6 think anybody on this jury has seen any of these ads.
7 They haven't seen -- I doubt anybody on the jury has
8 seen any of our sponsored links.

9 Q Mr. Cheng -- Mr. Cheng, you don't know what
10 anybody on this jury has seen of your own personal
11 knowledge, do you?

12 A Well --

13 Q Other than what they just saw here.

14 A Mr. Adamo, from the jury selection, as I
15 recall, there was only one potential juror who knew of
16 Newegg, and none of them are -- that person is not on
17 the jury right now.

18 And so I'm making an assumption that nobody on
19 this jury saw those links.

20 Q Let's try to stick to things that you're sure
21 of, not things that you're making assumptions of, Mr.
22 Cheng, okay?

23 Now let's talk about Fred Chang.

24 A Yes.

25 Q He's your founder?

1 A That's correct. He's our controlling
2 shareholder, and he is the primary founder. He will --

3 Q That was the question.

4 A Yes, he is.

5 Q That was the question. Thank you.

6 He's not only the controlling shareholder and
7 the founder, he's actually the person who owns 77.7
8 percent of Newegg, correct?

9 A I think that makes him our controlling
10 shareholder, yes.

11 Q The question was, he owns 77.7 percent of
12 Newegg, correct?

13 A Yes.

14 Q He controls 77.4 percent of the voting power,
15 correct?

16 A I'm sorry. Which page are you specifically
17 referring to? Is that 115?

18 Q I'm not referring to any page at the moment,
19 but if you would like to look at Exhibit P245.

20 MR. ADAMO: Mr. Gooden, would you put the
21 first page up, please?

22 Q (By Mr. Adamo) You recognize that, don't you,
23 Mr. Cheng?

24 A Yes. Yes. I just would like to be accurate,
25 Mr. Adamo, because you're throwing specific numbers at

1 me.

2 Q That's -- just hang on. I'll get you there.

3 A Thanks.

4 Q Your name actually is on the second page of
5 this document, correct?

6 A That -- that's right.

7 Q This is a document -- and Mr. Gooden will show
8 where your name is in one second.

9 That's you, right?

10 A That's me, yes.

11 Q All right. This document is one of a series
12 of what are called S1's that Newegg has submitted to the
13 United States Securities and Exchange Commission,
14 correct?

15 A That's correct, yes.

16 Q It's accurate to the best of your knowledge,
17 correct?

18 A It's accurate to the best of my knowledge.

19 Q Now, this is being submitted to the SEC as
20 part of a possible initial public offering of shares by
21 Newegg, correct?

22 A That's correct, yes.

23 Q And if you would, please, look at the page
24 that's numbered 115 in the bottom center.

25 A Sure. Sure.

1 MR. ADAMO: Mr. Gooden will have it up on
2 the viewing system, hopefully, in a few minutes.

3 Q (By Mr. Adamo) Why don't you and I -- while
4 he's pulling it up, let's you and I work through this.

5 On Page 115, you see there's a bunch of
6 information about beneficial ownership prior to the
7 offering.

8 A Yes, there is.

9 Q And Mr. Chang's name appears there as the --
10 second down, under officers and directors?

11 A That's correct.

12 Q And in the column that says, Class B Common
13 Stock, he's shown as holding 40,516,305 shares or 77.7
14 percent.

15 Do you see that?

16 A Well, actually, you scared me for a second,
17 Mr. Adamo. I thought you were referring to me. I'm
18 also Mr. Cheng.

19 Q My apologies. I just made you a rich man.
20 I'm sorry.

21 A I wish I owned 77 percent.

22 Q All right. I'm trying -- all right.

23 Mr. Cheng -- excuse me, Mr. Cheng.
24 Mr. Chang holds 77.7 percent of the Class B common
25 stock, correct?

1 A That is correct.

2 Q And also --

3 A Between that and also his family trust.

4 Q Well, next to Mr. Chang's name, it says 77.7
5 percent, correct?

6 A If you read the Footnote 3, it explains the
7 concept of beneficial ownership means that he or people
8 that he is affiliated with.

9 Q All right. So either Mr. Chang or his family,
10 through a trust, own 77.7 percent?

11 A That's correct, yes. Yes.

12 Q Okay. And that 77.7 percent that either he or
13 his family own represents 77.4 percent of the total
14 voting power, right?

15 A That's correct, yes.

16 Q All right. Let's go back to Page 12 of the
17 S-1.

18 MR. ADAMO: Which, Your Honor, is P245,
19 by the way.

20 Q (By Mr. Adamo) Page 12, there's a bold-faced
21 sentence that says: If we are unable to provide a
22 satisfactory customer experience, our reputation would
23 be harmed, and we could lose customers.

24 Do you see that?

25 A I do see that, yes.

1 Q There's a paragraph that appears immediately
2 below that paragraph.

3 Do you see that?

4 A Yes.

5 Q It starts: A critical component?

6 A Yes, I see the paragraph.

7 Q The second sentence of that paragraph --

8 MR. ADAMO: And, Mr. Gooden, if you could
9 highlight it along with me.

10 Q (By Mr. Adamo) -- reads: Quote, accordingly,
11 the effective performance, reliability, and availability
12 of our website and network infrastructure are critical
13 to our reputation and our ability to attract and retain
14 customers, period, close quote.

15 Did I read that correctly?

16 A You did.

17 Q Doesn't say anything about customer service in
18 that sentence, nothing specific, does it?

19 A Customer service is part of the customer
20 experience.

21 Q Mr. Cheng --

22 A It doesn't say anything -- I think if you view
23 customer service as we do, as part of the customer
24 experience, then a reference to customer experience
25 would include customer service.

1 Q Okay. There's no reference in that sentence
2 to customer experience, customer service, anything. It
3 reads: Quote, accordingly, the effective performance,
4 reliability, and availability of our website and network
5 infrastructure are critical to our reputation and our
6 ability to attract and retain customers, close quote; is
7 that correct?

8 A That's correct, yes.

9 Q And down further in that same paragraph is
10 another sentence that reads: Quote, the lack of these
11 services and inability to successfully provide an
12 adequate online shopping experience may cause certain
13 consumers to purchase products from our competitors
14 rather than from us.

15 Did I read that correctly?

16 A You did.

17 Q There's no mention in that sentence about
18 customer service, is there?

19 A No. No, he didn't. But online shopping
20 experience, it's conceptually very similar.

21 Q No. Online shopping experience is the use of
22 computers and the internet and the worldwide web to
23 provide a way for customers to buy products from Newegg;
24 isn't that correct?

25 A I don't think I would necessarily agree. You

1 could define it that way.

2 Q Newegg only -- sells everything online,
3 correct?

4 A Yes, that's correct.

5 Q You didn't have your online system, you
6 wouldn't sell a thing, would you?

7 A We could. It's possible. You know, if we
8 didn't have an online system, we would presumably
9 convert our business model, yes.

10 Q Well, you'd have to go on out and start
11 building stores, right?

12 A That's correct.

13 Q Well, in view of your frugality, that's not
14 something that's very likely. You're an online
15 merchant, you were built as an online merchant, and you
16 intend to stay as an online merchant, correct?

17 A That's not necessarily true. I mean, you see
18 a lot of online merchants -- some of our competitors,
19 they're adopting what's called a multichannel strategy.
20 And multichannel means -- business evolves. It just
21 evolves. And some of them are building stores.

22 Q You're not telling the Securities and Exchange
23 Commission that you're planning to do anything other
24 than remain an online shopping company, correct?

25 A That's -- that's absolutely correct. At this

1 point, we don't have plans, but I can't preclude the
2 possibility.

3 MR. ADAMO: Thank you, Your Honor. That
4 completes my cross-examination.

5 THE COURT: All right. Redirect?

6 MR. SAYLES: May it please the Court.

7 REDIRECT EXAMINATION

8 BY MR. SAYLES:

9 Q Mr. Cheng, just a few things.

10 Are you in any way trying to suggest or say
11 that the website and its robust functionality is not
12 important?

13 A No. Our website is our store. It's our store
14 front. It's just like the store front for a Best Buy or
15 a supermarket.

16 Q You were asked a number of questions about
17 advertising on Google and Gizmodo. Is that inconsistent
18 with your earlier statement that you don't engage in
19 mass advertising?

20 A In my view, absolutely not. What I meant by
21 mass market advertising are things that people commonly
22 do -- companies commonly do for branding purposes,
23 right.

24 And it just gets their name out there. What
25 we have always focused on, consistent with our policy of

1 being very frugal, are ways to advertise to build our
2 business as inexpensively and as cost effectively as
3 possible. It saves us money to allow us to keep our
4 prices low.

5 And online advertising, like the kind
6 Mr. Adamo introduced us to, it's by far the most
7 effective way to advertise, because you don't pay
8 generally for the advertising until someone actually
9 clicks on the add.

10 And, you know, so that's our secondary form of
11 advertising, as I mentioned earlier. Our primary form
12 of advertising is just by providing an excellent
13 customer experience.

14 So 70 percent of our revenue is generated from
15 repeat customers, people just telling their friends and
16 families.

17 Q 70 percent is repeat customers?

18 A 70 percent of our revenue comes from people
19 either directly typing in www.newegg.com, meaning they
20 know us or someone told us about us specifically, or
21 from us sending out e-mails to our existing customers.

22 Q All right. Last subject.

23 You were asked a couple of questions about the
24 one patent license that Newegg is a party to, and you
25 were asked a few questions about that on cross.

1 Would you explain what that license is about?

2 A That license is one where a patent pool -- so
3 sometimes in an industry, after probably years of
4 litigation, a lot of people get together, and they
5 contribute all of the patents relevant to, say, a
6 certain device family, like music players, into a patent
7 pool, right?

8 So MPEG -- I believe MPEG is a -- you know, I
9 think maybe some people have heard of MPEG3, MPEG4,
10 stuff like that. And my understanding is that MPEG, the
11 entity, is a license pool that has aggregated a lot of
12 these patents together.

13 And they approached us, as I'm sure they have
14 approached everybody else, and said, you know, we have
15 all of these patents, you know, and you should take a
16 license from us.

17 And we looked at the terms that they were
18 offering. The royalty that they were offering, it was
19 de minimis. It's literally never, I think, exceeded
20 \$4,000 a year.

21 And we found it more cost effective in that
22 one specific case to take a license so that we could
23 continue to sell a specific -- a couple of specific
24 models of music players.

25 Q All right.

1 MR. SAYLES: I'll pass the witness.

2 MR. ADAMO: Nothing further, Your Honor.

3 Thank you.

4 THE COURT: All right. Thank you. You
5 may step down, Mr. Cheng.

6 Who will be your next witness?

7 MR. SAYLES: May it please the Court. At
8 this time, we would call Mr. James Wu. And he's in the
9 witness room.

10 THE COURT: All right.

11 MR. SAYLES: Mr. Strachan will go get
12 him.

13 MR. ADAMO: Your Honor, might this be an
14 opportune time to hand up to the Court the list of
15 admitted exhibits from yesterday?

16 THE COURT: Yes, that will be fine.

17 MR. ADAMO: I have two copies. I'll give
18 them to the Courtroom Deputy.

19 THE COURT: All right. So do you have
20 this labeled?

21 MR. ADAMO: Yes, sir. The document is
22 labeled.

23 THE COURT: Okay. And these have already
24 been offered and admitted?

25 MR. ADAMO: Yes, sir. Yes, sir.

1 THE COURT: All right. Very well.

2 That's just for the Court's information then?

3 MR. ADAMO: Yes, sir. Thank you.

4 THE COURT: We're going to label that as
5 Plaintiff's Exhibit List No. 2, just for the record.

6 (Pause in proceedings.)

7 MR. SAYLES: I apologize, Your Honor. I
8 asked him to stay in the witness room, and he must have
9 stepped out.

10 (Witness enters the courtroom.)

11 THE COURT: Oh, here he is.

12 MR. SAYLES: All right. Very good.

13 Step over here to the witness stand.

14 THE WITNESS: Thank you.

15 MR. SAYLES: And Mr. Wu has been sworn,
16 Your Honor. He was here at the beginning.

17 THE COURT: Okay.

18 JAMES WU, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

19 DIRECT EXAMINATION

20 BY MR. SAYLES:

21 Q Good morning.

22 A Good morning, sir.

23 MR. SAYLES: May it please the Court.

24 May I begin?

25 THE COURT: Yes, you may.

1 Q (By Mr. Sayles) Would you introduce yourself
2 to the jury, please.

3 A My name is James Wu.

4 Q And what is your position with Newegg?

5 A I'm currently the chief technology officer of
6 Newegg.

7 Q The chief technology officer?

8 A Yes.

9 Q All right. And did you have anything to do
10 with the development of the Newegg website?

11 A I was the principal designer and the person
12 most responsible for the website, the architecture and
13 design.

14 Q Now, before we go into your work and design of
15 the Newegg website, I'd like to get a little bit more
16 information about you.

17 Where were you born?

18 A I was born in China.

19 Q And would you tell the Ladies and Gentlemen of
20 the Jury your educational background, please.

21 A I -- I attended high school and college in
22 China, and I received a bachelor degree of the computer
23 science at Si Chang University, which is a top 10 school
24 in China.

25 And I start getting first job working on the

1 Petro China, working on the oil refinery company.

2 Q Si Chang University. We have it up on the
3 slide there.

4 A Yeah.

5 Q And you got your degree in 1991, right?

6 A Yes.

7 Q And tell the Ladies and Gentlemen of the Jury
8 what you did in your first job at Petro China.

9 A Oh, Petro China is an oil refinery. They
10 mostly do the oil, transport gasoline. My job is also
11 computer related. I maintain a large -- the computer
12 system to control the pipeline. They call distributor
13 control system.

14 And I manage the media frame and the mainframe
15 and also I building the network. I establish a network
16 on 1991.

17 And after Microsoft is -- introduced NT --

18 (The Reporter asked the witness to speak
19 slower.)

20 THE WITNESS: Oh, sorry about that.

21 A So also -- I also building the company
22 internet using the Microsoft NT and building web server
23 and building the company home page and using the
24 Microsoft ASP technology to building dynamic page.

25 Q (By Mr. Sayles) So you worked in the computer

1 field at Petro China?

2 A That's right.

3 Q And when did you move to the United States?

4 A The first time I visited Houston, because the
5 company has the one big project and wanted to do the
6 process optimization, wanted to optimize the oil
7 refinery pipeline.

8 One company in Houston called the Aspen,
9 the -- all part of the world-class technology on this
10 field, so we come over to Houston for the training to
11 learn the cutting-edge technology.

12 Q All right. So you came to Houston for
13 training, and that was your first visit to the U.S.?

14 A That's -- that's correct, sir.

15 Q And what was your impression of the United
16 States when you visited here?

17 A Cutting-edge technology and the freedom and
18 the culture.

19 Q The freedom and the culture?

20 A That's right.

21 Q And were you the first person in your family
22 to earn a college degree?

23 A Yes, I'm the first one.

24 Q What did your parents do for a living?

25 A My parents is working as a field worker.

1 They're working at the home construction for -- to build
2 a new home. They building the -- they building the home
3 as a field worker.

4 Q A field worker?

5 A Yes.

6 Q All right. And when you came to the U.S. to
7 live here, when was that?

8 A Well, this is late 1999 or early the year
9 2000, I first came to the Los Angeles.

10 Q And did you -- did you interview for a job?

11 A Yes. I looking for job. I looking in the
12 newspaper and answer the advertisement. I got my first
13 job at ABS Technology.

14 Q All right. You mentioned the word ABS
15 Technology -- Computer Technologies.

16 A Yes.

17 Q Is that what became known as Newegg?

18 A Yes.

19 Q And what did you do when you joined Newegg?

20 A Well, the first job the company have as one
21 project is they want to convert the Microsoft Fox Pro,
22 the -- the system, to the large scale Microsoft SQL.
23 Even the Microsoft Pro system handle sales, inventory,
24 billing, and warehouse management. They want to convert
25 small scale to the large scale system. I took that job.

1 Q All right. Now we're going to have to touch
2 on a few of those words you mentioned a moment ago, but
3 in summary, you were building a larger system?

4 A That's right.

5 Q Okay. And back when you joined the company in
6 the year 2000, what was its business?

7 A Oh, ABS was doing the computer assembly to
8 sell the desktop to the customer.

9 Q Desktop computers?

10 A Yes.

11 Q And did it have a store then?

12 A No, they don't.

13 Q How did -- how did those computers get sold at
14 the time of around 2000?

15 A All they have is the two main. One is they
16 have the static website to --

17 Q Static website?

18 A Yes. Static website. And also the -- they
19 print the -- they print ads for the -- for the customer
20 to look in. If the customer interested, they pick up
21 the 800 number to call sales support to order.

22 Q So if there's a static website, it meant, if a
23 customer was interested, they had to pick up the phone
24 and call and place their order?

25 A Yeah. Call 800 number to ABS sales support.

1 Q When you joined the Newegg in 2000, how many
2 employees did it have at that time in the United States?

3 A About 90 people, most of our warehouse-related
4 employee, and including me, only possibly three
5 technology employee.

6 Q Three technology employees?

7 A Yes.

8 Q Counting you?

9 A Including me.

10 Q And let me show you a picture that is marked
11 Defense Exhibit 112, and it's No. 26, and this is just
12 the sign outside a building that's kind of scratched up
13 that says ABS Technologies.

14 What are we looking at here?

15 A Oh, this is the old site of the -- sign of the
16 Warehouse 1 building, which I working over there to
17 building the website, to building the whole system.

18 During the time, the company, all they had was
19 this one building.

20 Q All right. Now, let's take a look at the next
21 photograph. Is this the inside of the building?

22 A Oh, this look like the year 2004 or 2005,
23 because in the year 2000, we don't have that much
24 resources. We had less furniture, less people. Most of
25 the area is empty.

1 Q All right. How would you describe Newegg
2 today?

3 A Oh, Newegg is an online retailer. We sell all
4 the merchandising, is acting with the proper retailer.
5 So you can train and actually get the best buy on the
6 internet.

7 Q When you joined the company, did the Newegg
8 website exist?

9 A No, they don't.

10 Q You indicated that Newegg became an online
11 retailer. What type of stores does Newegg compete with
12 in the sale of products?

13 A Oh, most of the competitor company was Best
14 Buy, Circuit City, and HP, Dell, and Amazon.

15 Q All right. And does Newegg manufacture or
16 sale any E-commerce software?

17 A No, we don't.

18 Q Are you familiar with a company known as
19 Soverain?

20 A Never till the lawsuit was filed.

21 Q Does Newegg compete with Soverain in the
22 marketplace as you understand Newegg's business and
23 Soverain's business?

24 A No. We are the retailer.

25 Q And what does Newegg sell online?

1 A We sell the merchandising. We buy the
2 electronics from the distributor or manufacturer, and we
3 sell them through online. You never to leave the home
4 to shop. We have many offerings online.

5 Q And does Newegg manufacture these items?

6 A No. We just approved and we buy from the
7 manufacturer or distributor.

8 Q All right. Let me pull up Defense Exhibit 71,
9 and do you recognize this document?

10 A Oh, this is the home page of Newegg.

11 Actually, if one customer have the browser,
12 can open -- open it and type the address,
13 <http://www.newegg.com>. Then push enter, and the Newegg
14 home page will show up.

15 Q All right. Now, this is just an example that
16 was taken back just before -- well, before Christmas, I
17 guess, by the snowman that's --

18 A Yeah.

19 Q -- on the banner.

20 What are the categories that go across the top
21 ribbon here?

22 A Well, you know, we are the -- most of the top
23 revenue is called computer hardware. Most of these we
24 derive our revenue from.

25 Also, we sell the PC, the laptop, networking,

1 electronic, home theater, camera, camcorder, software,
2 gaming console.

3 So we have a lot of the category. The list is
4 very long. You can see these are just a list of partial
5 of the category we -- currently we offering.

6 Q Partial categories they're offering?

7 A Yes, that's right.

8 Q All right. Let's take a look at computer
9 hardware.

10 MR. SAYLES: If we can blow that up just
11 a little bit.

12 A Yeah. We -- because the computer hardware is
13 a category, we have -- there's a backup device, a
14 minicomputer, cable, CD, and a DVD, and a computer
15 accessory. They have many under the listed category.

16 Q (By Mr. Sayles) All right. And so the list of
17 products would go on for a long time if we went through
18 it?

19 A Right, very long.

20 Q Okay. And let's look at the rest of the home
21 page. And would you describe what -- what is shown
22 here?

23 A The rest of the home page is, most of all, the
24 deal and offering. You can see deal of the day, holiday
25 deal, and there's a deal page.

1 Q Deal of the day?

2 A Yes. Deal --

3 Q Holiday deal?

4 A Holiday deal. And also you can -- on the
5 bottom, you have some kind of the FAQ instructions, that
6 kind of stuff.

7 Q Who can access the Newegg website on to this
8 home page?

9 A Well, actually, anyone who own a personal
10 computer, also have ISP connection to the internet.

11 Also, they need to install the browser. She
12 or he can open the browser and then type the
13 www.newegg.com, then enter, then can access newegg.com.

14 Q All right. Now that we've taken a brief look
15 at the Newegg home page on its website, I want to take
16 you back to when you were first employed in the year
17 2000.

18 At that time, what sort of technologies was
19 Newegg using?

20 A During that time, we only use Fox Pro.

21 Q Fox Pro?

22 A Yes. Small-scale database system. We use Fox
23 Pro to manage the sales.

24 Q To manage what?

25 A Sales.

1 Q Sales?

2 A Yeah. All the entry and then billing, return
3 merchandising, called RMA, and the inventory management
4 system. They're all running on this Fox Pro database
5 system.

6 Q All right. And you said this was a small
7 scale?

8 A Yes.

9 Q What was the task that you were given?

10 A Oh, I was given -- wanted to enlarge capacity
11 of the whole system and --

12 Q To enlarge the capacity?

13 A Yes.

14 Q All right.

15 A I was given the job to say, okay, we need to
16 convert small-scale system, convert to large-scale
17 capacity using Microsoft SQL server as a back end.

18 Q SQL server? Is that the SQL here?

19 A Yeah. SQL server, yes.

20 Q What is an SQL server?

21 A SQL actually stand for the NC standard, the
22 structure query language. Microsoft SQL server is the
23 Microsoft implementation on this technology.

24 Q All right. So there was an implementation of
25 Microsoft SQL database on a small scale when you

1 arrived?

2 A Yes.

3 Q And your job was to convert that to a larger
4 scale?

5 A Yeah. It took eight months to convert it.

6 Q How long?

7 A Eight months.

8 Q Eight months?

9 A Yeah.

10 Q And you mentioned the word back end when you
11 mentioned the SQL server database. What -- what is back
12 end?

13 A Oh, back end just means all the part of the
14 data storing of Microsoft, is database server. That's
15 the meaning of the back end.

16 Q Beginning in 2000 and being given that job of
17 converting the system to a larger system, did you do
18 that?

19 A Yeah. I made --

20 Q Did you make it in the eight months?

21 A Yes. I spent the eight months.

22 Q How much help did you have?

23 A Can you repeat again?

24 Q How much?

25 A Eight months.

1 Q And how much help did you have?

2 A Well, only with other two co-worker. I spend
3 the eight months to convert all of the code. We write
4 all the code.

5 Q Write all the code?

6 A Yes.

7 Q And tell the Ladies and Gentlemen of the Jury
8 what it means to write code for a computer program.

9 A Well, that mean you needed the -- the
10 Microsoft development first. You line by line to write
11 the code and then compile and test it to make sure the
12 work is to expectation.

13 Then after all of the module would be re-write
14 of the new platform. Then the launch. And the launch
15 is more challenge as well, because we needed to be sure
16 all the department can work together. We took the
17 weekend, no sleep two night.

18 Q All right. Before we get to the launch, let
19 me be sure that we can understand what you were saying
20 there.

21 During the eight-month period when you were
22 making the conversion, were you and the two others
23 writing what's called the source code?

24 A That's right, source code.

25 Q Is that the code that makes a computer program

1 function in a certain way?

2 A Yes. Computer code, source code, is the
3 one -- lines of code that instruct your computer to
4 work. And also need to compile and install to the
5 computer.

6 Q What type of -- well, before I get to the
7 resources that you had, I want to ask you another
8 question, and then we'll get to that.

9 After you converted the SQL server database
10 from Fox Pro into a larger system, what was the next
11 task or goal that you were assigned?

12 A Oh, I was being asking to build the E-commerce
13 website.

14 Q To build an E-commerce website?

15 A Yes. I was given three months time period to
16 get the job done.

17 Q All right. And did the work that you were
18 doing at Newegg fit the skill set that you had developed
19 in your education and your work at Petro China?

20 A Yes. I have a computer science four-year
21 degree. I have ten years experience in the computer
22 field and the programming. I was very skilled, say, in
23 this area.

24 Q All right. And during the first eight months
25 when you were converting to a larger, more -- a larger

1 system with more capability, what kind of days were you
2 working? Long days?

3 A Yeah. Yeah, it was a long day, 10:00 at
4 night, even the weekend and even during the launch --
5 the launch day, converting day with two weeks on the
6 weekend with no sleep, just sitting over there working
7 like a dog.

8 Q Okay. The term has been used and it's a slang
9 term here, working basically 24/7?

10 A Yes.

11 Q All right. And then when you received the
12 task of building an E-commerce system, was that a
13 challenge?

14 A That's a big challenge. Three months take me
15 to building the E-commerce online shopping from the
16 ground. It was a big challenge.

17 Q To build it from the ground.

18 A Yes.

19 Q And what resources did you have to use to
20 build an E-commerce website?

21 A Nothing much. Company don't have the
22 financial resources. Only giving -- the management say,
23 okay, here's the computer, the parts. You guys building
24 new server, and you got three months to get E-commerce
25 up and running. And all of the -- the resources are

1 very limited, so you can see how big a challenge for us.

2 Q All right. Did I hear you say that you were
3 given server components or just parts?

4 A Yeah.

5 Q Did you build some of your own servers?

6 A Yes, we do. We -- because to do it in time,
7 the company have the assemblies business. We can have
8 ability to building a low-end server, so we just get
9 component to build server by ourself.

10 Q And why did you do it this way where you
11 built -- even built the server yourself from the parts
12 as opposed to just buying it?

13 A Well, number one, we don't -- we have the
14 financial limitation.

15 Number two, based on that financial
16 limitation, the company wanted to do more with less.
17 Everything they do the economic way.

18 Q Everything you can do the economical way?

19 A Yes.

20 Q All right. In addition to the programming
21 work that you did in 2000, what other responsibilities
22 did you have at Newegg when you first joined?

23 A Well, besides the programming work and also I
24 perform as IT technical support, such as I fix computer,
25 install the software, and also I -- I was the database

1 administrator and the whole system architecture. Many
2 role, human person.

3 Q You were responsible for the system
4 architecture?

5 A Yes, and also the database administrator.

6 Q So you were given the task and an eight-month
7 period to do it, and then another task and a three-month
8 period to do it?

9 A Yes.

10 Q And you had other duties as well?

11 A Yeah.

12 Q All right. And you told us that your second
13 task was to build an E-commerce website, and I think the
14 Ladies and Gentlemen of the Jury have heard that plenty
15 now, but is that basically online shopping?

16 A Yes, that is online shopping.

17 Q And did you build the Newegg online shopping
18 website?

19 A Yes, I did. I spend three months to get it up
20 and running.

21 Q And would you tell us how you did that?

22 A Well, actually, I do -- well, first step, I
23 need to develop the functional model.

24 Q Talk a little slower.

25 A I needed to develop the functional model, and

1 then --

2 Q Developed the functional model?

3 A Yes.

4 Q All right.

5 A And the second step, I needed to go to the
6 other website to take a look at the major functionality
7 and come up with a use case, a use case.

8 Q All right.

9 MR. ADAMO: Mr. Sayles, I'm sorry.

10 MR. SAYLES: Yes.

11 MR. ADAMO: I don't mean to interrupt,
12 but I'm having a difficult time understanding the
13 witness.

14 Could you ask the Court Reporter to read
15 his last answer back? I really didn't understand it.
16 Or could you help him, as you've been doing, with the
17 mic?

18 MR. SAYLES: I don't mind at all.

19 Q (By Mr. Sayles) Let's try that again, and I
20 want you to speak slowly.

21 A Sure.

22 Q And if I stop you, it's just to clarify, all
23 right?

24 A Okay.

25 Q When you built the Newegg online shopping

1 website, how did you do it? Let's just take it one step
2 at a time.

3 A First step, I needed to develop a functional
4 model.

5 Q Develop a functional model.

6 What was the second step?

7 A I needed to develop a use case.

8 Q Develop a use case?

9 A Use case.

10 Q And what is a use case?

11 A That means how the page link each other, the
12 use case.

13 Q How the pages link each other?

14 A Yes.

15 Q And then what was the next step?

16 A Then based on two, I needed to do the
17 programming.

18 Q All right. You needed to do the programming.

19 And then what did you need to do?

20 A Well, the programming I think through, I have
21 two choice, to recorder (sic) shopping cart event.
22 That's the question. I need the address.

23 Q All right. Let's see if I heard you
24 correctly. In the process of building the system, you
25 had a choice to make --

1 A Two choice.

2 Q -- regarding where you said recorder, but you
3 mean record?

4 A Yes.

5 Q Where to record what?

6 A Shopping cart event.

7 Q Shopping cart event.

8 What were the choices that you were faced with
9 as the designer?

10 A Well, number one, I needed to choose whether I
11 have to record everything to the central database on the
12 Microsoft SQL server side.

13 Q On the Microsoft SQL server side?

14 A Yes.

15 Q Is that the server that's over in Newegg?

16 A Yes, central side.

17 Q And you said you had a choice. What was the
18 choice?

19 A The second choice I have, I can utilize the
20 cookie on the customer computer side related to browser
21 to recorder (sic) all the shopping cart event.

22 Q To use a cookie on the customer computer to
23 record the shopping cart event?

24 A Correct.

25 Q All right. And which choice did you make?

1 A I pick up client cookie system.

2 Q And why did you -- as the designer and the
3 architect of this system, did you choose the client
4 cookie system to record the shopping cart event?

5 A Number one, as a skilled programmer, I knew a
6 lot -- a lot of the customer no going to the checkout,
7 just to the cart.

8 Q Okay. A lot of customers weren't going to
9 check out? So what? What does that mean?

10 A Well, I needed -- I -- I needed a central
11 database. I needed large storage, large server, many
12 memory to store everything you need to recorder (sic).

13 Q I see.

14 So if a user of the system didn't finish the
15 transaction, if you had a database on the Newegg side,
16 it would take up space that it didn't need to take up?

17 A That's right.

18 Q And so the choice you made was to use the
19 client cookie system?

20 A Yeah.

21 Q And were you familiar with the concept of
22 cookies from your background, education, training, and
23 experience?

24 A Yeah. The cookie is very straightforward, the
25 https, the protocol, the component; and at first, they

1 introduced it by Netscape on early of the '90.

2 Q Introduced by Netscape in the early '90s?

3 A Yes.

4 Q All right. And when you were building this
5 E-commerce system, did you copy anything?

6 A No.

7 Q What did you base your development of the
8 Newegg online shopping website on?

9 A Oh, based on my -- the ten years experience
10 and formal education.

11 THE COURT: Mr. Sayles, we're -- been
12 going about an hour-and-a-half. Whenever you get to a
13 good place, I think it would be appropriate to take a
14 break.

15 MR. SAYLES: All right. We can do that
16 now.

17 THE COURT: All right. Very well.

18 All right, Ladies and Gentlemen of the
19 Jury, we're going to take a 15-minute break, until
20 10:45. Please remember the Court's instructions, and
21 I'll see you back here then.

22 COURT SECURITY OFFICER: All rise.

23 MR. ADAMO: Your Honor?

24 THE COURT: Do you have a matter?

25 MR. ADAMO: After -- I'm sorry. If the

1 Court would just stay for a moment.

2 (Jury out.)

3 THE COURT: All right. Please be seated.

4 All right. You have some matters for the
5 Court?

6 MR. ADAMO: Yes. I'm trying to cooperate
7 with Mr. Sayles as much as I possibly can here.

8 THE COURT: Y'all are doing a good job of
9 cooperating, both of you.

10 MR. ADAMO: Under the circumstances, but
11 it's getting to the point now where what the witness is
12 saying and what Mr. Sayles is saying aren't matching.

13 When I asked Mr. Sayles just now to
14 clarify what the witness had said, I'm going to have to
15 hope the Court Reporter heard this the first time
16 around. He changed his answer.

17 And Mr. Sayles, frankly -- and I've tried
18 to give as much leeway as I can, because I've been in
19 this situation before, but he is really starting to lead
20 him.

21 Now I'm trying to be cooperative, but I
22 have to have a record that it's him testifying and not
23 Mr. Sayles saying what he thinks the witness said.

24 THE COURT: Okay. Is the Court Reporter
25 getting down what the witness is saying?

1 THE REPORTER: As best I can.

2 THE COURT: As best you can?

3 THE REPORTER: As best as I can.

4 All right. Well, we have a language
5 problem, so I'll ask Mr. Wu to please try to speak as
6 slowly and as distinctly -- I know it's not your native
7 language, but as you can so that the Court Reporter can
8 get it down, and the jury can hear your testimony.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Sayles, you just try to
11 do the best -- I know nothing intentional, but be sure
12 you try to repeat back as accurately as you can, if you
13 have to interpret for him.

14 MR. SAYLES: I will, and I assure the
15 Court and Mr. Adamo that I would never intentionally --

16 THE COURT: I understand.

17 MR. ADAMO: It was not my -- it was not
18 my intention to imply that; but as I said, I've been in
19 similar situations, and sometimes what you thought you
20 heard is not what the witness really said, and then I
21 don't know whose testimony I've got. I mean, I trust my
22 colleague --

23 THE COURT: It might be better just to
24 try to get him to answer the questions as best you can.

25 MR. ADAMO: A little less leading would

1 help.

2 THE COURT: All right.

3 MR. ADAMO: Thank you, Your Honor.

4 That's all I have.

5 THE COURT: Try to watch the leading as
6 much as you can.

7 MR. SAYLES: All right.

8 THE COURT: Okay. Anything further?

9 MR. ADAMO: No, sir. Thank you.

10 MR. SAYLES: Thank you, Judge.

11 THE COURT: All right. We'll be in
12 recess.

13 (Recess.)

14 THE COURT: Please be seated.

15 All right. Ladies and Gentlemen of the
16 Jury, you got a little extra long break there. The
17 Court Reporter had some technical difficulties with her
18 equipment we had to get straightened out.

19 All right. You may proceed, Mr. Sayles.

20 MR. SAYLES: May it please the Court.

21 Q (By Mr. Sayles) Mr. Wu, I'm going to ask you
22 to be careful and stay close to the microphone and speak
23 slowly. All right?

24 A Okay.

25 Q Back at the time you were doing your work in

1 2000, had you ever heard of the company Open Market?

2 A Never heard that.

3 Q Back when you were doing your work that you
4 described in the year 2000, were you aware of the
5 patents-in-suit?

6 A No.

7 Q And there has been some testimony that you
8 have not heard because you haven't been in the
9 courtroom, but did you ever hear of a software product
10 that could perform the E-commerce function that you were
11 trying to build back in 2000?

12 A Yes. There were several of them. It's the
13 big names offering, such as ABM --

14 Q ABM?

15 A Yeah, ABM. WebSphere.

16 Q Websphere?

17 A Yes. Another one, Microsoft, has the same
18 kind of product called -- Microsoft has the same
19 servers, same kind of product.

20 Q A Microsoft product?

21 A Yeah. Another one called ATT, ATT is the one
22 the -- because E-commerce software is the leader.

23 Q All right. Had you ever heard of a software
24 product called Transact?

25 A Never.

1 Q And why is it that, instead of you having to
2 work night and day, you didn't purchase a software
3 product for building and using an E-commerce site?

4 A Oh, there are several reasons. Number one,
5 company have the financial limitation. We don't have
6 the extra money to acquire the big software package.

7 Q You don't have the money to acquire a big
8 software package?

9 A That's right.

10 Q All right.

11 A Number two, we don't know the commercialize
12 the software because the time will be the successful if
13 we are using.

14 Q All right. Now, based on your knowledge and
15 experience, do many customers shop but not end up
16 checking out, for whatever reason?

17 A Yes. We have a lot of the customer shop into
18 cart, change quantity, but never checkout or checkout
19 later.

20 Q And you told us that one of the choices you
21 had was to use a customer cookie system to store the
22 shopping cart event. Would you tell us why you've made
23 that choice?

24 A The choice is -- is the natural choice for me.

25 Q A natural choice?

1 A Natural choice for me. Because cookie side of
2 the shopping cart event only utilized customer computer
3 storage to record the order event. And if I using the
4 database, central database to record order event, I knew
5 many customer just shop, add to cart, and change
6 quantity. But most of them never check it out.

7 Q Does a server-side database rely on a cookie?

8 A No, the server-side database system don't rely
9 on the cookie.

10 Q Are there differences to using a cookie-based
11 system to record the shopping event as opposed to the
12 server-side shopping cart?

13 A They do have some difference.

14 Q And are there advantages and disadvantages,
15 from Newegg's perspective?

16 A One is for user side disadvantage, number one.

17 Q Say that again.

18 A The customer, they have the disadvantage.

19 Q It has an advantage?

20 A Disadvantage.

21 Q Disadvantage. And what is that?

22 A Number one, if customer pay to cart on the
23 office's computer and go back to home to check,
24 everything is gone.

25 Number two, if customer has a multiple browser

1 such as using Microsoft Explorer to add-to-cart and
2 using the Firefox to open, then everything is gone.

3 Q So do some computers have more than one
4 browser on them?

5 A Yes, they do.

6 Q And that's what you were mentioning there?

7 A Yes.

8 Q If a customer goes from one browser to the
9 other?

10 A Everything's gone.

11 Q Okay. And are there any disadvantages
12 directly to Newegg?

13 A They do.

14 Q And what is that?

15 A For the Newegg side, for example, we have the
16 data entry value. We have the 500,000 add-to-cart
17 event. But on the everyday we only be able to generate
18 40,000 order. You can see, if we knew all the 500,000
19 event not only to check out the order, the customer --
20 our marketing department will be -- have more visibility
21 to target those kind of customer who never be checked
22 out.

23 Q If you knew what a customer who did not check
24 out chose, your marketing department could address that?

25 A If we have the data for customer, we should be

1 able to do the better job to target this kind of
2 customer.

3 Q But with the system that you built and the
4 choice you made, does Newegg have that ability?

5 A No, we don't have this capability now.

6 Q I'm now going to take you back to Defense
7 Exhibit 71, which you've already testified was the
8 screen-shot from the homepage --

9 A Yes.

10 Q -- of the Newegg website?

11 A Yes, it is homepage of Newegg's website.

12 Q And I would like to walk you through the
13 website so that the jury can see as you go deeper into
14 it.

15 If the customer clicks on one of the
16 categories on the row at the top, then what happens
17 next?

18 A Going to list in the category page, and then
19 listing all the product under that category.

20 Q All right. Let's look at 74. Is this some of
21 the products that they would get if they clicked on a
22 certain category?

23 A Yes. This is the category called solid state
24 disk. Your customer navigate this page. All the
25 associated items under this category, would be listing

1 over there.

2 Q That's solid state drives or disks?

3 A Yes, solid state disk.

4 Q And what happens on the Newegg website when
5 you click the add-to-cart button?

6 A If customer clicks the add-to-cart button,
7 then the item identification, the web server is going to
8 read identification and generate setup cookie command,
9 customer's browser download back html document which set
10 up a cookie command folder going to establish a cookie,
11 an eight-item identification into the cookie and with
12 quantity one.

13 Q Did you say an html command?

14 A Html instruction.

15 Q What is that?

16 A Html is the hybrid markup language. It is
17 the -- the web server generate html document, and in the
18 meantime the server set up the one string called set up
19 the cookie command.

20 Q If a customer wants to add another item by
21 clicking on add-to-cart, where does that item go?

22 A Follow the same process. Add-to-cart again.
23 The folder that receive the html document from the web
24 server and also going to add a single-line item which
25 item identification into the local cookie.

1 Q And the cookie is stored?

2 A On the customer PC side.

3 Q All right. And did you review, at my request,
4 a slide to help explain how the Newegg website works, as
5 a matter of fact?

6 A Yes.

7 Q Let's take a look at Demonstrative 21. And
8 would you describe how the Newegg system works just
9 using this demonstrative to explain it?

10 A Yes.

11 Q And just stick to the facts, all right?

12 A Yes.

13 Q All right.

14 A You can see this is the cookie side of system
15 currently Newegg is using. On the right-hand side of
16 the customer folder, and a little bit the cookie, and
17 the three-line item: Camera, battery, memory. On the
18 right-hand side you can see the Newegg, they have the
19 one --

20 Q On the left-hand side?

21 A Yeah, left-hand side. The triple W that
22 stands for worldwide web. And the two machines, one
23 machine called web server. On the top, one called
24 Newegg shopping cart database server.

25 So if customer finds first item called camera,

1 he or she clicks add-to-cart button. The camera listed
2 item identification, and is sent to the web server. Web
3 server read this item identification and it generate
4 html document and along with one string, which is called
5 set up cookie command.

6 Then click the browser, download html document
7 back to browser. The browser pick up one string, set up
8 the command, and establish this little cookie in one
9 string called camera equal quantity piece one.

10 Q Say that last part again.

11 A The browser going to establish the cookie
12 based on html instruction, and force a line item into
13 the cookie called camera quantity one.

14 Q All right. And is what we see on the left
15 side of the demonstrative labeled Newegg, servers that
16 are over at the Newegg facility?

17 A Yep.

18 Q And what we see labeled customer or client,
19 where would that be?

20 A Customer, that mean any user sitting in the
21 home or office that uses their computer to open the
22 browser we called customer side. They are not called
23 client.

24 The Newegg side is a server that is offered by
25 Newegg in our data center. The server have two kind of

1 server we have. One is called web server; on the top is
2 database server.

3 Q All right. And when a customer selects a
4 camera or a battery or memory, does Newegg add those
5 items at that time to its database on the Newegg side?

6 A No, because we choose cookie-base system, we
7 never add line item into the shopping cart database. We
8 just -- the browser, receive the html document and add
9 into the -- of the cookie. We never adding to database.

10 Q All right. Now, you mentioned to us earlier
11 before the break that one of the advantages of the
12 system is that it requires less computer space?

13 A Yeah.

14 Q All right. Now, just for the moment if -- if
15 you had made the choice to add the -- add-to-cart items
16 over on the Newegg side, how much more computer space
17 would you need?

18 A Based on my estimation to the time, if we put
19 in all the shopping cart information to the Newegg
20 shopping cart database, you can just store the one day.
21 Based on last year's data, we have a half million
22 add-to-cart event. Only 40,000 item to become final
23 order. That would be 15 times bigger required
24 infrastructure and including the server, including the
25 memory, including hard disk.

1 In general, we store the seven-day --
2 currently the cookie has a seven-day life cycle. If we
3 use seven day as the storing in the database side, it's
4 going to be 15 times 7. That's more than 100 times the
5 space capacity, memory need to be established on
6 Newegg's server side to holding as a solution.

7 Q All right. So in the notebook in front of you
8 there is a copy of DX81.

9 Do you recognize that?

10 A Yes.

11 Q Tell us what it is.

12 A This is the Newegg shopping cart page. Any
13 customer want to review how many line items in she or
14 her or his shopping cart, he can open this page to look
15 in the line item and the subtotal.

16 Q All right. Now, we can't see it very well
17 because we can't blow this one up, but in the right-hand
18 corner, the orange button down here, what is that?

19 A It's called checkout button.

20 Q And what is the checkout button?

21 A Checkout button is the -- we put it over there
22 for customer who start a purchase in the shopping cart.

23 Q And if a customer wants to make a purchase,
24 how many times do they hit checkout?

25 A Under last year's data, we still using the

1 half million add-to-cart operation, only 40,000 order
2 become final order. About 6 to 8 percent customer going
3 to hitting the checkout button.

4 Q 6 to 8 percent hit the checkout button?

5 A Yes. 6 to 8 percent.

6 Q And if a customer does indeed wish to check
7 out, how many times do they have to hit the checkout
8 button?

9 A Can you repeat the question?

10 Q Yes. If a customer does want to check out,
11 how many times do they hit the checkout button?

12 A You only need to hit the button one time. All
13 the data of the cookie value are going to be uploaded to
14 the Newegg's temporary shopping cart database just one
15 time. No matter one line, two line, nine line; just one
16 time.

17 Q All right. In the system that you developed,
18 is hitting checkout adding items into a shopping cart?

19 A Yes.

20 Q In the notebook in front of you, there are
21 copies of DX106. Do you recognize this?

22 A Yes. This --

23 Q Describe what it is, please.

24 A This page is we call order confirmation page.
25 Customer pay forward to submit final order. He or she

1 can review all the information he input, such as billing
2 and the payment and line item he wish to order.

3 Q All right. So we have in the lower right-hand
4 corner a button that says submit order?

5 A Yes. They have the button for customer wish
6 to complete a final order. He have the choice --

7 Q And that's different from checkout?

8 A That's different from checkout.

9 Q What is the difference?

10 A Only difference is here, if customer review
11 the final order, they can be able to click submit order,
12 become permanent, permanent order instead of temporary
13 data. And after click, Newegg, the web server, going to
14 pull all the temporary shopping information, including
15 line item, and all the billing, shipping, payment
16 information we collect; and we put it together into
17 order XML document sent to Newegg messaging
18 infrastructure for loading to our Newegg data center.

19 Q An XML order, was that that term you used in
20 that answer?

21 A Yes. XML order document for the loading to
22 our in-house data center.

23 Q Is that what you just described what happens
24 between a customer hitting checkout and a customer
25 hitting submit?

1 A Yes.

2 Q From your background, training, and
3 experience, do you know what the session identifier is?

4 A Yes, I do.

5 Q What is that?

6 A Session identifier really just is a creatable
7 web server and then client side collects the data and
8 stores in your local computer. Then append it on the
9 following your request, and sent back to the web server.
10 This generically may tend to state.

11 Q All right. And for a session ID to work, are
12 some actions required on the client computer?

13 A Yes, it does.

14 Q What actions?

15 A Make a selection. First of all, require the
16 client to storing session ID. Number two, client need
17 append session ID on the following the request. Number
18 three, the browser on local client side need to send
19 request along with the ID.

20 Q As the architect of the Newegg system, can you
21 tell us whether Newegg stores a session ID at the
22 customer computer?

23 A No, that's customer browser does.

24 Q Does Newegg add the item to messages at the
25 customer computer?

1 A No, that's customer browser download
2 information. Customer browser performs the action.

3 Q Does Newegg send the item from the customer
4 computer?

5 A No. Customer's browser send item information
6 and downloads the html information back. We never send
7 it.

8 Q All right. I would like you to tell the
9 Ladies and Gentlemen of the Jury how you developed
10 Newegg's website source code.

11 A Source code, as I state before, is the one
12 word to instruct the computer to perform the task. And
13 we are using the Microsoft technology as a primary. We
14 are using the Microsoft ASP.net, or ASP, C#, and SQL,
15 and all the language. We're using the source code
16 server to allow the programmer check-in and the
17 checkout, make the change again in the source code.

18 After the -- after the people make the change
19 based on the project, then they go into the compile of
20 the source code to binary format, then load it into the
21 system.

22 Q All right. Did you say C#?

23 A Yes, C#.

24 Q Is that a C with a little number sign after
25 it?

1 A Yeah, C pound.

2 Q And one of the other letters you mentioned was
3 ASP?

4 A Yes, ASP. ASP.net, yes.

5 Q And you mentioned MSMQ; what is that?

6 A That was the messaging for structure. We
7 using the MSQ, and we using the queue technology. That
8 mean if you sending over there this technology, we will
9 guarantee the message going to be delivered to
10 somewhere. It's one-time guarantee.

11 Q All right. And are these items that you used,
12 are these standard programming models?

13 A That was very standard offered by Microsoft.

14 Q All right. You've told us what source code
15 is. How many lines of source code are there in the
16 Newegg website, if you include all its functions?

17 A On the Newegg website for you just take away
18 the bottom line of this code, Newegg's website going to
19 have 636,000 lines of source code. That's the whole
20 website functionality.

21 Q 636,000 lines?

22 A Yes.

23 Q And how many line items of code consist of the
24 shopping cart in the session ID tracking functionality?

25 A Roughly less than 4,000.

1 Q Less than 4,000?

2 A Yes.

3 Q So what percentage of the source code that you
4 developed for the Newegg shopping center is related to
5 the shopping cart ID and session tracking function?

6 A If the number just you want together, we just
7 get is 0.66 percent related to the session and the
8 shopping cart. Point 66.

9 Q Point 66 percent?

10 A Yes.

11 Q Less than 1 percent --

12 A Yes.

13 Q -- of the total source code?

14 A Less than 1 percent.

15 Q All right. Besides the Newegg shopping
16 cookie, what other cookies does Newegg use to handle
17 shopping?

18 A Well, we use another one called the cart ID,
19 which is to facilitate three steps of the checkout
20 process.

21 Q And how are the shopping cart ID cookies
22 created?

23 A Oh, like I say, this cookie ID, because we
24 have this three-step with customer hitting the checkout,
25 we needed the one cookie to facilitate transaction in

1 case, prevent all the information lost. You hitting --
2 customer hitting the checkout button, the server just
3 makes the function call to number generate a table to,
4 just to say, give me the new number.

5 Q Okay. And have we prepared a graph for you to
6 explain how the Newegg system works in this regard?

7 A Yes.

8 Q And can you explain this very slowly?

9 A Yes.

10 This chart is -- just demonstrate how the
11 Newegg -- the checkout button in the several step, the
12 procedure.

13 If customer hitting the checkout button on the
14 shopping cart page, the web server going to the first
15 action, say take the number.

16 Q All right. Then what happens?

17 A Then second step, this number going to be
18 placed on the cookie.

19 The third step, the web server going to read
20 line item information of the shopping cookie, marry with
21 shopping cart ID together.

22 Q Marry it together?

23 A Marry shopping cart ID with cookie value,
24 which the item identification, along with quantity
25 together, insert into shopping cart temporary table is

1 one time.

2 Q All right. So whatever is on this cookie is
3 dropped into this temporary table that has taken a
4 number?

5 A Yes. It just takes number that we upload one
6 time.

7 Q All right. And then when the submit-order
8 button has happened, is clicked, what happens?

9 A If customer clicks submit-order button, the
10 web server just pull all the temporary information from
11 the server and combine with the payment, billing,
12 shipping information together, web server using this
13 information to create one XML, the document, and is
14 sending it to messaging system, such as MSQ, they wrote
15 it into the Newegg in-house data center for processing.

16 Q And that's what happens when you hit the
17 checkout button?

18 A That's what happen when you hitting on the
19 submit-order button.

20 Q All right. Why does Newegg need a shopping
21 cart ID to identify this shopping cart data?

22 A Because we have this three steps in the
23 checkout process. We needed one number to prevent that
24 information to loss. So this number just can be
25 arbitrary number to protect the data loss for the

1 three-step page.

2 Q Now, has Newegg grown and thrived since you've
3 been there since 2000?

4 A Yes.

5 Q And you told us that at the beginning of your
6 work you had a fork in the road between developing a
7 system based on a server side database or a customer
8 cookie system?

9 A Yes.

10 Q Now that the company obviously has many more
11 resources than it had back in 2000, has Newegg changed
12 that architecture and that system that you designed?

13 A No.

14 Q And why are you still using that design even
15 though you programmed it in 2000 with so little
16 resources?

17 A Well, Newegg is number-one performer in term
18 of the responding time because our whole -- Newegg's
19 architecture, the shopping cart, Newegg is number-one
20 performers in the world. We happy with our performance,
21 so we stick with our solution.

22 Q You're happy with the performance so you'll
23 stick with it?

24 A We are number one now.

25 MR. SAYLES: Pass the witness.

1 THE COURT: All right.

2 Cross-examination.

3 MR. ADAMO: May I have a moment just to
4 get squared away, Your Honor?

5 THE COURT: Yes, you may.

6 (Pause in proceedings.)

7 MR. ADAMO: Thank you.

8 May I have two minutes, Your Honor --

9 THE COURT: Yes, you may.

10 MR. ADAMO: -- just to talk to Dr. Grimes
11 for a moment?

12 I apologize to the Ladies and Gentlemen.

13 (Pause in proceedings.)

14 MR. ADAMO: Thank you, Your Honor.

15 I apologize, Ladies and Gentlemen.

16 THE COURT: No problem.

17 MR. ADAMO: I need the smart guys to talk
18 to.

19 CROSS-EXAMINATION

20 BY MR. ADAMO:

21 Q Okay. Mr. Wu?

22 A Yes, sir.

23 Q Good morning.

24 A Good morning, sir.

25 Q Close to the mic?

1 A Sure.

2 Q Slowly.

3 A Okay. Thank you.

4 Q Okay. We're not in a hurry. What we need is
5 for you and I to be able to hear each other.

6 A Okay.

7 Q All right. Deal?

8 A Deal, sir.

9 Q All right.

10 Let's talk first about your use of Microsoft
11 equipment and technology. Okay?

12 A Okay.

13 Q Microsoft did not design Newegg's web pages,
14 correct?

15 A Microsoft -- yes, they did not prepare the web
16 page. We -- our web server generate the web page.

17 Q But you programmed them, not Microsoft,
18 correct?

19 A We only program the server. The server
20 generate the page.

21 Q Microsoft did not design Newegg's web pages,
22 correct?

23 A Agree.

24 Q Okay. You designed your own web pages,
25 correct?

1 A We design the system. The system generate the
2 page.

3 Q Okay. So the system that you designed
4 generated the pages, right?

5 A Correct.

6 Q Microsoft did not program Newegg's web pages,
7 correct?

8 A We program the system. The system generate
9 the page.

10 Q Okay. So you programmed the system that then
11 generated the page. And you did that, not Microsoft,
12 right?

13 A Not Microsoft.

14 Q Okay. You programmed -- you Newegg --
15 programmed the web pages that your customers see,
16 correct?

17 A Can you repeat the question?

18 Q Yes. Newegg -- you -- programmed the web
19 pages that the customer sees, correct?

20 A Newegg, we just program the system. Customer
21 download the page to show up the browser; customer sees
22 the browser.

23 Q Which is how you designed the system to work,
24 correct?

25 A Yes.

1 Q You designed your system on the assumption
2 that your customers would have browsers, correct?

3 A That's the -- that's the common knowledge
4 during the year 2000, every computer has a browser;
5 netscape, Microsoft Explorer. Not assumption; it's the
6 fact.

7 Q Okay. So you relied on that fact when you
8 designed your system?

9 A Yes.

10 Q And you also relied on the fact that, in the
11 browsers you just mentioned, the default is that cookies
12 are enabled, turned on, correct?

13 A Most of the browsers does --

14 Q Yes. In each of the browsers that you just
15 mentioned, and you knew this when you designed the
16 system, the customer, if they didn't do anything to the
17 browser, cookies would be turned on. That was the
18 default, correct?

19 A Yes or no. It depends --

20 Q The customer would have to go in --

21 A Well --

22 Q -- and do something to shut them off.

23 A Let me put it this way --

24 (Reporter requests Counsel and the
25 Witness to speak one at a time.)

1 MR. ADAMO: Yes, I'm sorry.

2 Q (By Mr. Adamo) Let me start again.

3 With the browsers that you mentioned, that you
4 were aware of when you designed the system --

5 A Yeah.

6 Q -- the browsers are on unless the customer
7 goes in and does something to turn them off; is that
8 fair?

9 A Yes, but --

10 Q That's -- that's the answer to the question.

11 A Yes, but some of the enterprise have the
12 firewall setting in filtering all the cookie. So if the
13 customer have the most secreted label, such as the big
14 company, they going to have the firewall policy and the
15 filtering disable the cookie no matter what.

16 Q Let me see if I can say that back so we all
17 can understand it.

18 If you're in a big company and the company's
19 got a firewall --

20 A Yeah.

21 Q -- the firewall may prevent working with
22 cookies; is that fair?

23 A Yes.

24 Q Okay.

25 A And some small user does have the internal --

1 the firewall does the same function, too.

2 Q If that was the type of person who got on the
3 website that you designed, they couldn't complete a
4 transaction, correct? If you don't have cookies turned
5 on on the customer side, they can't buy anything from
6 your system?

7 A Right.

8 Q And that's the way you designed it?

9 A That's the condition, yes.

10 Q That's the way you designed it, right?

11 A We try to design like this way.

12 Q Now, Newegg also -- not Microsoft, but
13 Newegg -- programmed the shopping cart cookie, I think
14 you call it NV, low underlining, Newegg cookie?

15 A We don't program the cookie. The cookie --
16 the cookie is broader functionality. Newegg only
17 generates html document. Html document will contain one
18 string called cookie instruction. What happen, customer
19 browser download html document back from Newegg server.
20 The browser going to promote action based on html
21 string. We don't program the cookie.

22 Q All of which you designed the system to do,
23 correct?

24 A We only design the system to generate html
25 document.

1 Q With respect to the cookie as you just
2 described it, correct?

3 A With the cookie with respect only the string
4 of the cookie instruction.

5 Q But that's what Newegg did? Microsoft didn't
6 do that for you; you did it?

7 A Yes, that's -- we did it, yes.

8 Q And the functionality of the cookies as they
9 worked in your system that you designed, you did that,
10 not Microsoft, correct?

11 A The functionality of the cookie, or the
12 nature, is introduced by Netscape. All of the browser
13 have the nature -- the cookie, the behavior. We didn't
14 develop no cookie. We just developed html document,
15 which generate from the web server or the string, what
16 string contains html cookie instruction.

17 Q You took advantage in the system you designed,
18 of how you knew Netscape cookies and other cookies
19 worked, right?

20 A That's common sense. Every people --

21 Q Well, I agree with you it's common sense. But
22 that's what you did, not Microsoft, right?

23 A Yes.

24 Q Now, a little earlier I asked Mr. Sayles to
25 repeat back one of your answers. Do you remember when I

1 stood up and asked him to do that?

2 A Yeah.

3 Q Okay. And when you repeated back to
4 Mr. Sayles the answer, you changed your answer, didn't
5 you?

6 A I don't remember.

7 Q Well, I will represent to you that you changed
8 your answer. And I believe, according to the three
9 notes from my colleagues --

10 A Uh-huh.

11 Q -- that what you originally said when you were
12 asked about the steps you took in designing --

13 A Yeah.

14 Q -- your -- your internet sales system --

15 A Uh-huh.

16 Q -- you said you looked at other websites to
17 determine their functionality. Do you remember telling
18 them that?

19 A Yes. Yes, I say that.

20 Q And that's what you did?

21 A Yes.

22 Q And by looking at -- and at the time you did
23 this, looking at the other websites, Newegg had no
24 experience with running an online shopping website,
25 right?

1 A That's correct.

2 Q Okay. And when you worked for the oil company
3 in -- is it -- there's two Chinas, right, some people
4 say. There's Taiwan, and there's the Mainland. Are you
5 from Taiwan originally or from the PRC?

6 A The Mainland.

7 Q The Mainland. All right. So you're not from
8 the ROC, the Republic of China, Taiwan; you're from the
9 place where Beijing is?

10 A Yes.

11 Q Okay. When you were working for the oil
12 company over there for the ten years, you weren't
13 working on any online shopping database, correct?

14 A I do working on the online, the transaction
15 system. I working as the company network. I building
16 the first network, the Novell network back to the early
17 '90s. Then I building the SQL network based on
18 Microsoft NT. I do the programming based on the SQL
19 server, based on ASP, to maintain the company
20 information system. The common sense database, ASP,
21 browser, html.

22 Q But none of that had anything to do with
23 consumers buying something from the oil company, right?

24 A You're right. But --

25 Q Okay. That's all I wanted to know.

1 All right. Now, you said in designing the
2 system, that one of the reasons you chose to use the
3 storage of your customers' computers was because you
4 knew that a lot of people will take a shopping cart but
5 wouldn't go all the way through checkout?

6 A Correct.

7 Q You learned that from somebody else's website
8 that you had studied to determine the functionality,
9 right?

10 A This is nature assumption. This assumption is
11 not a study. Like I go to the shopping -- most of the
12 time during the year 2000 I go to the eBay or to
13 somewhere, just -- all the HP or Dell, because the
14 Newegg during time only big target competitor is Dell
15 and HP. We go to the website to take look to building
16 the system, to building the shopping cart, but I never
17 checkout.

18 Q Mr. Wu, you admit that you looked at other
19 websites to determine functionality. That's the answer
20 you changed. Remember that?

21 A I did search the website to look at
22 functionality to generate a use case.

23 Q Right. And you looked at the functionality of
24 other online shopping websites, correct?

25 A Yes, I did.

1 Q And, in fact, the one you undoubtedly looked
2 at was Amazon.com, right?

3 A Well, Amazon.com during time is not our
4 competitor --

5 Q That's not what I asked you. Try to answer
6 the questions, and we will get done with this much more
7 quickly.

8 What I asked you was -- not who your
9 competitors were -- I asked you which other websites you
10 looked at.

11 A Well, I remember looking at HP and Dell
12 because we are assembling the computer. We are the
13 main -- same business with them.

14 If you -- possibly I'm looking at Amazon,
15 possibly not, because we are only want to do same
16 business with Dell because they are taking market share
17 from us.

18 Q In 2000 when you designed the system, you --
19 the company was still trying to transition from
20 assembling computers into the new business, correct?

21 A Right.

22 Q So at the time you designed the system, you
23 didn't have a system, you didn't have anything to
24 compete with HP and Dell at that point, right? You were
25 trying to design it?

1 A Then I look at their website to come to learn
2 what's the functionality and the use case and the flow.

3 Q You may have looked at Amazon.com's as well,
4 correct?

5 A Well, I may. I even may look at eBay.

6 Q You're aware that Amazon.com is licensed under
7 the patents in this case, aren't you?

8 A No. I never heard this case.

9 Q Now, you -- you said that your choice that Mr.
10 Sayles went over and over with you about where the
11 shopping cart database information was going to reside,
12 either on your side of the wall, or the street I should
13 say, your server system or your customer's computers,
14 you made that choice because you didn't want to pay for
15 extra storage; is that fair?

16 A I don't have money to pay.

17 Q Well, I understand. I understand that. I --
18 I appreciate being, as we'd say in English, skinned,
19 having no money, Mr. Wu.

20 But you made the choice because, we'll say it
21 your way, you didn't have money to put the storage on
22 Newegg's bill, right?

23 A To holding extra data, yes, I don't have money
24 to do so.

25 Q So you ended up, however, with all of the

1 storage that you needed by borrowing your customer's
2 computer to do some of the storage that Newegg had to do
3 somewhere; isn't that fair?

4 A Why I say to borrow? The storage of the
5 cookie already is there. I don't need to borrow them.
6 That's the nature of functionality.

7 Q So you took advantage -- let's not say borrow,
8 let's just say used -- you got the storage space that
9 you needed by using how your customer's cookies worked?
10 So the information, instead of you having to store it,
11 your customers did it for you because that's the way you
12 designed your system, right?

13 A I utilize the nature of general functionality
14 of the cookie to record on the shopping cart event.
15 That's all.

16 Q And you knew that's the way the cookies
17 worked; you knew your customers were going to have
18 browsers; you knew the default condition on browsers was
19 going to be the cookies were turned on. So you designed
20 the system so that the shopping cart data, at least
21 until it got put over when checkout was punched, the
22 shopping cart data was being stored by your customers
23 for you. That's what you did, isn't it?

24 A That's the broader performance function to
25 store the data into the local. We don't have the

1 control. That's broad function does. That's local --

2 Q You knew that, and when you designed the
3 system, you designed the system to take advantage of
4 that, correct?

5 A That's the nature, we utilize the
6 functionality.

7 Q And you knew that and you took advantage of it
8 so that you, because you didn't have the money, couldn't
9 pay for the storage you needed, you needed the storage,
10 so you got it from your customers?

11 A That is the customer's standardized
12 functionality of the browser site we can use.

13 Q You made some mention earlier of temporary
14 shopping cart database. Do you remember that?

15 A Yes, I do.

16 Q By temporary -- and you remember you were
17 deposed in this case. Remember you had a court
18 reporter?

19 A Yes.

20 Q And you testified for Newegg. Do you remember
21 that?

22 A Yes.

23 Q By temporary there, you meant it was stored at
24 least the period of time between when checkout was
25 pushed, and then we went through all the operations we

1 just saw on your last slide; and either the information
2 was then passed to shipping and payment, or you'd hit
3 the end of the business day, whichever came first,
4 right?

5 A Yeah.

6 Q So it was stored; it was just a question of
7 for how long?

8 A The question is stored a whole lot because why
9 we call temporary, the nature, we don't have the data.
10 We just needed the temporary data stored in the
11 temporary table for three-step transaction. That's
12 another reason we even have daily the job to purge this
13 data.

14 Q Yes, but that's my point. The data, once
15 checkout was pushed in that circular diagram we just
16 looked at, the data goes into the shopping cart
17 database. And when you say it's temporary, it stays in
18 there either until the rest of the sales transaction is
19 completed or you get to the end of the business day and
20 then you purge it, right?

21 A Correct.

22 Q When the shopping cart database comes from the
23 cookie, whether it's one item, two items, three items,
24 and goes into the shopping cart database, that changes
25 the contents of the shopping cart database, doesn't it?

1 A No. Just one time to insert; never change,
2 never modification.

3 Q No, the insertion --

4 A Is the insert --

5 Q The insertion changes the contents of the
6 database, doesn't it?

7 A No.

8 Q First there's nothing.

9 A They just user one row in line. It's not a
10 change; it's just an insert only, upload only.

11 Q Let's see if we can agree with this. Before
12 the insertion, the shopping cart database for that
13 particular customer and transaction is empty, right,
14 before the insertion?

15 A It's not empty. It's nothing.

16 Q Well, nothing is empty, right?

17 A Empty is not nothing.

18 Q Well, in any event, let's say there's nothing.

19 After the insertion, in the shopping cart
20 database, at least temporarily, there's all the
21 information relating to what the person wants to
22 purchase; is that correct?

23 A Just one time from nothing becomes a record.

24 Q Is what I said correct? I am going to ask you
25 the question one more time. I'm trying to be very

1 specific about the question.

2 When the information from the cookie goes into
3 the shopping cart database, we go from nothing --

4 A Nothing.

5 Q -- to all of the information that was on the
6 cookie being stored in the shopping cart database,
7 correct?

8 A Just insert as one time, yes.

9 Q Well, one time or whatever, it's in there and
10 it's being stored in the shopping cart database,
11 correct?

12 A Temporary stored.

13 Q Temporary meaning until either we complete the
14 sales transaction or it's time to go home and we purge
15 the system at the end of the business day, right?

16 A Correct.

17 MR. ADAMO: I have nothing further, Your
18 Honor. Thank you.

19 THE COURT: Any redirect?

20 MR. SAYLES: May it please the Court.

21 REDIRECT EXAMINATION

22 BY MR. SAYLES:

23 Q Mr. Wu, have you ever testified in a courtroom
24 in front of a jury before?

25 A No, never.

1 Q All right. You were asked by Mr. Adamo if you
2 changed your testimony in response to my question, but
3 did you acknowledge to him the first time, and when he
4 reasked it, that you saw other websites?

5 A I did say I saw other websites.

6 Q All right. And when you look at a website on
7 its face, does that tell you anything about the source
8 code that is behind it?

9 A No. Just major, several steps, add-to-cart,
10 checkout, browsing. That's just the use case.

11 Q And after you look at a website of HP or Dell,
12 or any other party that has a website, does that give
13 you any inside or insight to how they've written their
14 source code and made it work?

15 A No. It just use case.

16 Q And with regard to the Newegg site, do you
17 take responsibility for the writing of that source code
18 which makes the website function in the manner it does?

19 A Yes, I take the use case and think it how to
20 implement at the programming level.

21 Q You were asked about your experience at Petro
22 China and if that related to an E-commerce consumer-type
23 website. And you said no, but.

24 Did your experience there have any
25 relationship to the job that you had in developing an

1 E-commerce website?

2 A All of the programming, already I have
3 experience. Web server, html, the SQL database, all the
4 ASP.net, ASP. I already do several projects to using
5 this technology for all phases of people to input
6 information and collecting the database and inquiries
7 later on. That's an easy job for me.

8 Q All right. So, essentially, were the
9 principles the same?

10 A Right.

11 Q Was the common knowledge the same?

12 A It is the same.

13 MR. SAYLES: Pass the witness.

14 THE COURT: Anything further?

15 MR. ADAMO: Nothing further, Your Honor.

16 Thank you.

17 THE COURT: All right. Mr. Wu, you may
18 step down.

19 THE WITNESS: Thank you.

20 THE COURT: All right, Ladies and
21 Gentlemen of the Jury, we're going to take our noon
22 recess in just a moment. And we're going to be in
23 recess until 1 o'clock for lunch. Give you a little
24 longer for lunch today. I've got another matter I need
25 to take up immediately following our break in about five

1 minutes.

2 So, Counsel, you may leave your materials
3 on the table, but just kind of clean them up and stack
4 them up and turn them over, that type of thing, because
5 there will be a bunch of other lawyers in here.

6 MR. ADAMO: Yes, sir.

7 THE COURT: Be in recess until 1 o'clock.

8 COURT SECURITY OFFICER: All rise.

9 (Recess.)

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1 C E R T I F I C A T I O N

2

3 I certify that the foregoing is a correct transcript
4 from the record of proceedings in the above-entitled
5 matter.

6

7 /s/

8 SHEA SLOAN, CSR, RPR

9 OFFICIAL COURT REPORTER

10 STATE OF TEXAS NO. 3081

11

12

13 /s/

14 JUDITH WERLINGER, CSR

15 DEPUTY OFFICIAL COURT REPORTER

16 STATE OF TEXAS NO. 267

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